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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

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# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 6, 1847.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## PRESENT STATE AND FUTURE PROSPECTS OF THE PROFESSION.

THE commencement of a new legal year, and of a new volume, nearly contemporaneously with the opening of the first session of a new parliament, naturally suggests some observations with reference to the present state of the legal profession and its future prospects.

Undoubtedly, the profession in all its branches, besides participating, as it always must, in the general depression and stagnation of business produced by monetary embarrassments, has many peculiar grievances to complain of. By an exaggeration of unavoidable evils,—by fostering, in the first instance, erroneous views of presumed defects, and availing themselves of unfounded prejudices, a party of restless, though it may be well-meaning, persons have had sufficient influence, within the last few years, to originate and carry out a series of legislative experiments seriously affecting the interests of the profession, and ultimately operating to the great detriment of the public. Whether these systematic attacks upon the law through its professors are to be persevered in, or whether the County Courts Act is supposed to have crowned the work, and satisfied the views of those who acted as if they designed to render the administration of justice odious and contemptible, we shall not venture to anticipate. We incline to think, however, that the crusade can no longer be prosecuted with success. The public already begin to be sensible of, and will at no very distant period become indignant at, the deception practised on

them. As soon as this is fairly and fully understood, the sympathies of all who desire to facilitate the maintenance of public and private rights and to protect property cannot fail to be enlisted on the side of the profession, and the triumph of truth will be complete. We are sanguine enough to think that means now exist for advancing the profession in public estimation, which were heretofore wanting. The new parliament, as our readers have been already informed, contains an increased number of lawyers, as compared with that which was recently dissolved: it is to be hoped some of the new members will feel, that a diligent discharge of duty to their constituents is not inconsistent with a determination to watch over and uphold the interests of their professional brethren, and that it can no longer be said the law is the only profession unrepresented in parliament. The cordial spirit of union, and desire to co-operate for all legitimate purposes, which at present prevails amongst the existing law societies—old and new—also affords reason to suppose, that any future attempts to weaken the respect for the law by trampling upon those concerned in its administration, would be successfully resisted. Let us add, that the measures expected to be simultaneously adopted by both branches of the profession for the promotion and maintenance of a sound system of legal education, cannot fail to strengthen and augment the just influence of the profession, whilst they may be said to deprive its adversaries of one of their most formidable weapons.

Reverting from general topics to more detailed considerations, we are forced to

admit that the immediate prospect of business is by no means encouraging. In the courts of equity, as well as the courts of law, the number of causes standing over from the last Term is comparatively trivial, and we know not in what quarter we can look for even an average proportion of new business. The circuits yielded too little to afford any expectation that they can supply the courts in Term with much business. Railway operations in parliament and elsewhere are paralysed, and notwithstanding the financial embarrassments of the commercial and trading community, from causes we have endeavoured already to point out, the suitors in the Court of Bankruptcy have not increased. On the present, as on other occasions, it will be found that the profession can only thrive in seasons of general prosperity.

It may be considered premature to discuss the measures affecting the administration of the law, which the ensuing session of parliament is likely to produce. It can readily be imagined that the state both of this country and of Ireland create so many urgent claims on the attention of government, that topics of a less pressing nature can obtain little consideration. The difficulties in working the County Courts Act, however, are found to increase so much every day, that we apprehend it will be impossible to allow the session to conclude without some attempt at its amendment. Passing events, also, demonstrate more than ever the necessity for a thorough revision of the Law of Bankruptcy and Insolvency, which has been long promised, and cannot much longer be safely postponed. The state of the revenue, it will again be said, does not render the present the most promising period (when, in the name of justice, will the time arrive?) for pressing the repeal of that monstrously unjust impost—the Certificate tax; but this matter should never be lost sight of, and whenever any modification or revision of the general taxation is contemplated, an occasion must be found to force the subject on the consideration of government. The enormous “taxes on justice” in the shape of fees of office, amounting probably to half a million a year, should also be again brought before parliament. So, likewise, the important subject of the removal of the courts from Westminster to the vicinity of the Inns of Court,—towards which desirable end many circumstances and which he (Tarrant) retained. Mr. Ballantine, as counsel for the prisoner, we trust, be revived with renewed energy.

The establishment of a General Registry for Deeds;—the creation of a new Commission for Superintending a large class if not all Charitable Trusts;—and a comprehensive alteration of the Jurisdiction of Ecclesiastical Courts will probably afford materials for early discussion. Upon all these and many other questions, the vigilance of each individual member of the profession, and the combined exertions of all, will be required, no less to redress present wrongs and avert threatened evils, than to derive advantage from favourable opportunities. Apathy and disunion have deprived the profession of its just influence. If for these we substitute energy tempered by discretion, and a cordial desire to co-operate for general purposes, the future may be contemplated—not without anxiety—but with hope and well-founded confidence.

#### PRACTICE AT THE OLD BAILEY BAR.

UPON questions of general polity the newspaper press is truly independent, and exhibits every variety of opinion; but when an individual unconnected with any particular party, and who happens, moreover, to be connected in any respect with the law, is to be reproached or condemned, the habits of our contemporaries are gregarious, and their “unanimity” is wonderful! An incident which occurred at the last Old Bailey Sessions, in reference to which a great deal of well-expressed indignation has been lavished, has afforded occasion for a remarkable display of the spirit we have noticed.

It seems that a person named Tarrant was indicted for stealing lambs, which were found in his possession, and dealt with by him as his own, very shortly after they were missed by the owner. Tarrant, when charged with the robbery, admitted that he had sold the lambs in a public market, but alleged that he had done so at the instance of a person named Roadnight, the son of a farmer well known in the neighbourhood. He also stated, that Roadnight had come to him after he had gone to bed for the night, and awoke him by throwing gravel at the window of the room in which he slept, and then asked him to take the lambs to market and sell them, which the prisoner said he did, paying over the proceeds to Roadnight, with the exception of a small sum owed to him by Roadnight, and which he (Tarrant) retained. Mr. Ballantine, as counsel for the prisoner, elicited by cross-examination the statement

made by him to the police constable who took him into custody, and the confirmatory fact, that upon going to the prisoner's house, some small gravel stones were found on the window sill, as if they had been thrown at the window. It was also stated, that Roadnight had previously been an object of some suspicion, and that he was in the court or its vicinity during the trial. Under these circumstances, Mr. Ballantine, in his address to the jury, commented strongly on the fact, that although Roadnight was in court, and might have been called to contradict the prisoner's statement, the counsel for the prosecution did not think fit to put him in the box, from which the jury were asked to infer that the prisoner's statement was well founded, and that he acted as the servant of Roadnight, and without any guilty knowledge that the lambs were not his property. The Recorder, who presided, adopted the learned counsel's suggestion, that Roadnight ought to have been examined for the prosecution, and the jury, probably influenced very much by this circumstance, acquitted the prisoner. It afterwards turned out that Roadnight attended the trial in pursuance of a subpoena served on him by the solicitor for the prisoner, and when this fact was disclosed, the Recorder appears to have felt that in summing up he had attached undue weight to the fact that Roadnight was not called for the prosecution, and he complained that an advantage had been taken of the jury, and that the court was deceived by the prisoner's counsel.

Now, with every inclination to defer to the learned Recorder, we must be permitted to express our doubts whether the judicial rebuke which he administered, and which has been made a text for many severe remarks, was justly merited. Whether Roadnight was subpoenaed at the instance of the prosecutor, or by the diligence of the prisoner's solicitor, can make no material difference in the merits of the case. He was in attendance, and might have been called upon by either party. The question was, which party ought fairly to have been expected to examine Roadnight as a witness? The prisoner made a statement, which, if correct, was consistent with innocence, and Roadnight might have affirmed or contradicted the prisoner's statement. To have affirmed the prisoner's statement, however, Roadnight must have admitted that he had committed a felony, whilst in contradicting the statement he

would have discharged himself from the imputation of being concerned in the robbery, and at the same time demolished the alleged defence. The counsel for the prosecution advisedly declines putting a witness into the box under such circumstances. Is not this a legitimate topic for observation on the part of the prisoner's counsel? But the observation would have lost half its force if the witness had not been present. The prisoner's advisers had taken the precaution of enforcing the attendance of Roadnight, before his counsel challenged those who conducted the prosecution to place him in the box. Had this been formally announced, we cannot conceive that it would have told unfavourably for the prisoner. It would have demonstrated that the prisoner was not afraid of the production of a witness whose testimony, if credible, might falsify the statement on which his defence rested. To entitle his counsel, however, to announce the fact that the prisoner's solicitor had subpoenaed Roadnight, he must be prepared with evidence to support the assertion, and the production of such evidence would have laid his client open to the disadvantage of a reply from the prosecuting counsel. Mr. Ballantine, judiciously, as we conceive, omitted to state by whom Roadnight was subpoenaed. For this he is charged with something unworthy—with a trick and a deception. We are at a loss to see in what the deception consisted. He mis-stated nothing. He referred to the corporal presence of Roadnight, and asked why is he not called for the prosecution? Whether the Crown Office subpoena was put into Roadnight's hand by the solicitor for the prisoner, or the solicitor for the crown, was immaterial, and afforded no reply to the question put by the prisoner's counsel. The head and front of Mr. Ballantine's offending appears to be, that he omitted formally to state an unimportant fact, which, if it had any effect, tended favourably to his client. Surely he was not bound to do so. Let us add, that whilst it is most desirable that the members of the bar should conduct themselves with uniform deference and respect to those placed in judicial authority, and scrupulously adhere in all their statements to the truth, it behoves the bench to be most guarded and cautious in reflecting on the motives and conduct of those practising before them. A censure pronounced under such circumstances carries with it the weight of the judge's station superadded to the opinion

of the individual. A hasty or ill-founded reproof administered under such circumstances amounts to a judicial indiscretion, and may be productive of greater injury than could have been intended or designed.

### COSTS UNDER THE SMALL DEBTS ACT, (8 & 9 VICT. c. 127).

A JUDICIAL opinion has been given by Vice-Chancellor Sir Knight Bruce, as to the proper construction to be put upon the 3rd section of the Act "for the better securing the Payment of Small Debts," in reference to a matter on which great doubt and uncertainty has hitherto prevailed. As under the late act, 10 & 11 Vict. c. 102, the Small Debts Act is in future to be administered by the Commissioners of the Insolvent Court, and the judges of the several County Courts throughout the kingdom, it is desirable that our readers should be in possession of the learned Vice-Chancellor's views upon a question admitted to be one of some difficulty.

The 1st section of the Small Debts Act provides, that if any person is indebted in a sum under 20*l.*, besides costs of suit, by force of any judgment, the creditor may obtain a summons from any Commissioner of Bankruptcy for the district in which the debtor lives,<sup>a</sup> and the debtor appearing before the commissioner shall be examined, &c.; and it shall be lawful for the commissioner to make an order on the debtor for the payment of his debt by instalments or otherwise, and if he shall not pay the same at such time as the commissioner shall order, the commissioner may order the debtor to be committed to gaol for any term not exceeding 40 days. In this section, it will be observed, that no mention is made of any costs other than the "costs of suit," which are the costs incurred in the action, and ascertained before final judgment is signed. The 3rd

section, however, enacts, "that any person imprisoned under the act, who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, and all subsequent costs, shall, upon entry of payment indorsed on the order of imprisonment, be discharged." The proceeding before the commissioner, upon an application for an order for payment, was necessarily attended with some expense, and when an order was made to pay by instalments, that order disregarded, and a warrant of commitment issued and executed, the costs were proportionably increased. The question, therefore, arose in various cases, whether a contumacious debtor, committed to prison under the commissioner's warrant, was bound to pay any, and if any, what, proportion of those costs, under the words of the 3rd section. The Bankrupt Commissioners, although frequently appealed to upon the subject, did not feel themselves called upon to decide what was the true construction of the 3rd section, and no judicial opinion appears to have been pronounced upon it, until the case of *Ex parte Shuckard, in re Archer*,<sup>b</sup> came before Sir J. L. Knight Bruce. In that case, a warrant was issued, and threatened to be enforced, unless a sum of about 7*l.* was paid for costs, upon which the debtor (Shuckard) paid the sum demanded under protest, to avoid being sent to gaol, and applied for redress to the Court of Review. It does not appear from the report, that any question arose as to his Honour's jurisdiction to determine a matter arising under the Small Debts Act, and both parties agreed to treat the matter as an application to tax the costs claimed by Mr. Archer, the solicitor of the judgment creditor. The principle upon which the bill should be taxed, with reference to the language of the 3rd section, was discussed, however, and the Vice-Chancellor (after consulting Mr. Commissioner Fane), expressed his opinion that the words "costs remaining due at the time of the order of imprisonment being made," meant the costs mentioned in the commissioner's order for payment, and which were incurred before the application for such order; and that the words, "all subsequent costs," meant, the costs incurred by reason of the debtor's default in payment pursuant to the order made by

<sup>a</sup> By the act of last session, (10 & 11 Vict. c. 102,) the jurisdiction of the Courts of Bankruptcy under this act is transferred to the Insolvent Court, where the debtor has resided for six calendar months within any parish the church of which is not more than 20 miles from the General Post Office, and to the County Courts, in all cases where the debtor resides elsewhere, and has resided for six calendar months next immediately preceding the time of the application in the district of the County Court to which the plaintiff shall apply. See the statute, section 6, 34 L. O. 311.

<sup>b</sup> Reported 16 Law Jour. p. 6, Bankruptcy Cases.

the commissioner. According to this construction, as we comprehend it, the costs incurred by a plaintiff between final judgment and default in payment under an order, which, of course, include the costs of the application for an order for payment, cannot be enforced against the debtor in any event. By the defective state of the law, these costs are thrown, not upon the contumacious debtor, but upon the diligent creditor, a result the injustice of which does not require to be enlarged upon.

adopted, when generally understood by the profession, will be duly appreciated, and that future digests will be compiled on a similar footing.

We are gratified that the arrangement adopted in the *Legal Observer* has thus far been approved by the learned compiler of the present work, which comprehends the Practice of the Common Law Courts, and takes in sufficient of the past decisions on that subject to form a very useful book of reference in the office of the practitioner. The subjects comprehended in the volume are arranged in alphabetical order as follow:—

## NOTICES OF NEW BOOKS.

*An Analytical Digest of Selected Practice Cases, decided in the Common Law Courts, to Trinity Term, 1847; arranged under the several Heads of Practice, for the Facility of Reference.* By RICHARD MORRIS, of the Middle Temple, Barrister-at-Law. London: Stevens and Norton. 1847. Pp. 381, lxxxiii.

Our readers are aware that "The Analytical Digest of Cases Reported in all the Courts," which had been for many years published separately, was two years ago incorporated into the *Legal Observer*, upon a plan which appeared to be not only desirable for the purpose of convenient subdivision, but affording to the reader the means of easy reference; each section comprising one entire subject, viz.,—1. Principles. 2. Pleading. 3. Practice. 4. Evidence, &c.

This plan appears to have struck Mr. Morris, the present author, as a useful one, for he states that

"The design of the present Digest has been, to furnish a selection of cases connected with the practice of the common law courts, with a *special view to an immediate and easy reference*; and, in that particular, to obviate an inconvenience incidental to the arrangement of the several existing Digests, which embrace with practice legal details generally. With respect to the classified arrangement of the subject-matter, coupled with the Analytical Index, the compiler is led to hope the work will be found to answer the purpose contemplated."

We have no doubt, the arrangement here

<sup>c</sup> We are thus enabled to place before the practitioner all the cases, within a certain period, upon any topic of his investigation, with references to the authorities cited in the judgments. The student, also, instead of a miscellaneous collection of decisions on all sorts of subjects, is presented with a consecutive and readable article.

Abatement of Suit. Admission of Documents. Affidavit. Amendment. Appearance. Arbitration. Arrest. Attachment. Attorney. Award. Bail. Bill of Exceptions. Certificate. Cognovit. Computation of Time. Consolidation of Actions. Costs. Declaration. Demurrer. Discontinuance. Distringas. Ejectment. Error. Execution. Inferior Courts. Inspection of Documents. Interpleader. Irregularity. Judgment. Jury. Motions. New Trial. Nisi Prius. Nolle Prosequi. Non Pros. Nonsuit. Notice of Action, of Trial, and to Produce. Nul tiel Record. Office Copies. Order of Judge. Outlawry. Oyer. Particulars of Demand. Pauper. Pleading. Prisoner. Prochein Amy. Recognizance. Record. Rules. Sheriff. Setting aside or Staying Proceedings. Special Case. Taxation. Term's Notice. Venue. Verdict. Warrant of Attorney. Witness. Writ. Writ of Trial.

## VACANCY IN THE OFFICE OF TAXING MASTER IN CHANCERY.

GEORGE GATTY, Esq., one of the Taxing Masters in the Court of Chancery, having resigned his office, a vacancy has occurred, which it is in the gift of the Lord Chancellor to fill up by the appointment of a solicitor of 12 years standing. The salary, it will be recollected, is 2,000*l.* a year.

The Suits' Fee Fund, which is charged with Mr. Gatty's compensation, will suffer by this resignation to the extent of about 200*l.* a year only. It was erroneously supposed by some persons that the whole salary was deducted from the compensation, but the difference will be of small amount to the fund, though large to the late Master. He will receive 5,424*l.* 14*s.* 4*d.* a year, instead of 7,232*l.* 19*s.* 1*d.*, according to the Order of 6th Dec. 1843.<sup>d</sup>

This is one of the the few appointments, both honourable and lucrative, to which solicitors are eligible.

## RUMOURED RESIGNATION OF LORD DENMAN.

It was currently reported in Westminster Hall, on the first day of Term, that the noble and learned Lord Chief Justice of the Queen's Bench, having presided in that court for a period of fifteen years, had intimated some disposition to retire, and that his successor would probably be Lord Campbell. We have been unable to trace the rumour to any sufficient authority, and believe that its confirmation would be received with regret by the profession as well as the public.

## BUSINESS OF THE COURT OF REVIEW.

WE understand that the appointment of Vice-Chancellor Wigram as judge in matters of Bankruptcy, as stated in a late number, (34 L. O. 579,) was made in reference to his position as Vacation Judge in Equity, as a temporary arrangement, to prevent inconvenience, and not with any intention of transferring to him the business formerly transacted in the Court of Review. That Court, as our readers are aware, was abolished by the recent statute, 10 & 11 Vict. c. 102, but the jurisdiction will continue to be exercised, as before the passing of the act, by Vice-Chancellor Knight Bruce. The misapprehension which existed in the profession on this matter was adverted to by Vice-Chancellor Wigram, on the first day of Term, and its origin explained.

## YEOVIL SMALL DEBT'S COURT.

[Before *E. M. Carrow, Esq.*, Judge.]

*Andrews v. Hammond.* Oct. 23, 1847.

THIS was a case under the Interpleader Act, in which the landlord of a house claimed priority over the goods of his tenant, (William Nettleton, of Marston,) which goods had been seized under an execution issued by this court. In this case his Honour delivered judgment in the following terms:—

"This was an application made by the high bailiff, under the 118 sec. of 9 & 10 Vict. c. 95, in consequence of a claim for a year's rent, made by the landlord of the house occupied by the defendant, in respect of certain goods therein taken in execution, under a judgment of this court, for 20*l.* and costs.

"At the hearing of the interpleader summons it was not disputed by the execution creditor

that the rent was due, but it was contended that the 107th section of the act has deprived landlords of all the privileges conferred upon them by the 8th of Anne, c. 14, s. 1, and several decisions of other County Courts were cited, in which the rulings of the learned judges appear to be directly at variance.

"In deference to these conflicting opinions, I thought it right to take time to consider this case, and the result of my consideration is to confirm my opinion that the landlord is not by the latter act deprived of his priority over the execution creditor.

"The statute of Anne, entitled 'An Act for the better Security of Rents, and to prevent Frauds committed by Tenants,' in providing 'for the more easy and effectual recovery of rents,' enacts, that no goods or chattels whatsoever shall be liable to be taken by virtue of any execution, or any pretence whatsoever, unless the party at whose suit the execution is sued out, shall, before the removal of such goods from off the premises by virtue of such execution, pay the landlord of the premises the rent due at the time of taking the goods and chattels by virtue of such execution—not exceeding one year's rent.

"The 9 & 10 Vict. c. 95, s. 107, enacts, that so much of the statute of Anne as relates to the liabilities of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any court holden under this act.

"The question, therefore, to be considered is, what was the liability created by that statute; and it appears to me that the difficulty in these cases has arisen from the use of the word 'liability;' and that 'non-liability' or 'exemption from liability,' would have more clearly expressed what I apprehend to have been the intention of the legislature in the County Courts' Act, viz., that the liability of such goods was an exemption from liability to be taken in execution until after the execution creditor should have paid a year's rent to the landlord; and as it was probably considered that the continuation of such an enactment would be unjust to creditors, and productive of great fraud in cases of small debtors, whose rents could often be received monthly or even weekly, the section goes on to enact under what limitations the landlord's rights, conferred by the statute of Anne, shall be protected—not, as it appears to me, with a view of taking away the priority given by that statute, or repealing the statute, but only of removing the obstacles in the way of an early sale of the goods.

"For this purpose it enacts that the landlord shall deliver to the bailiff a claim for the rent in arrear, not exceeding four weeks in weekly lettings, or two terms in other cases, so as not to exceed in any case one year's rent; and if such claim be made, the bailiff is to distrain both for the amount of the execution and for the rent, and, after five days, may sell the goods.

"It will be observed that this act takes away from the bailiff the obligation, previously im-

posed upon the sheriff, to provide for the payment of the rent before selling the goods, and the consequent necessity of his ascertaining whether the claim for rent is well founded. Instead of that duty by the 118th section, he is entitled to call upon the court to adjudicate as to the validity of the claim made (*inter alia*) by any landlord for rent upon goods seized in execution, or their proceeds. It, therefore, appears to me that this is the proper course for him to take in all cases where there is not sufficient property to satisfy both demands; and that this provision is expressly intended to give the landlord an opportunity of establishing the claim on which he founds his right to priority, and would be perfectly nugatory if, upon establishing it, he had no such priority. If he had none, the execution creditor's right could not be affected by the validity of a claim for rent which would only be a debt of an inferior grade to his own; as I think it could hardly be intended that the landlord should have this opportunity of proving that the goods were the property of a third person, and not the tenant, and, therefore, not liable to be taken in execution for the tenant's debts.

"An argument in favour of the prior right of the execution creditor was founded on the latter part of the 107th section, which directs, in case of replevin being made, that so much only of the goods shall be sold as shall satisfy the execution and costs of sale. But it must be remembered that in replevin the landlord has security for his rent in the sureties to the bond, and therefore has no object in retarding unnecessarily the sale of the goods until after the determination of the suit in replevin.

For these reasons, therefore, my judgment will be in favour of the claim of the landlord, but, in consideration of the difference of opinion upon the subject, the costs will be divided between him and the execution creditor."

[From the *Sherborne, Doncaster, and Taunton Journal*.]

## VISITS TO THE OLD LAWYERS.

## LORD KENYON.

MR. KENYON served a diligent clerkship with Mr. Tomkinson, a solicitor of good practice at Nantwich, in Cheshire. His services were much approved of, and his master wished to engage him as a partner, but they could not agree on the terms. The clerks of that day did not select what is now called the better part of practice, leaving all drudgery to others; but one of their accomplishments was, to write a good hand and engross papers, wills, and deeds, and they were not allowed to leave the engrossing as being wholly unworthy of an articulated clerk's attention. Clerks do not know that the engrossing of a well-drawn will or deed would amply repay them with the information it contained, and the manner in which the facts are stated and in which the object of the deed is expressed.

Time rolled on,—Mr. Tomkinson's clerk became successively and deservedly, Queen's Counsel, Master of the Rolls, and Chief Justice of England.

While Lord Kenyon, as Chief Justice, was sitting at *Nisi Prius*, engaged in the bustle and hurry of a cause, Mr. Tomkinson, then an old man, was called as a witness to prove a deed. Lord Kenyon did not know it was his old master. The deed was proved, and Lord Kenyon requested the old gentleman to read the deed; he was confused and flurried, and read the deed with some hesitation. Lord Kenyon told the witness that if he could not read the deed, he, the Chief Justice, would read it for him, which he did in a very fluent way. The old master was ruffled, sat down, and whispered to a friend who sat next him, "HE may well read it, for he engrossed it himself, while he was in my office!"

## ATTORNEY'S ADMISSIONS.

*Michaelmas Term, pursuant to Judges' Orders.*

*Queen's Bench.*

[See the previous Lists, 34 L. O., pp. 221, 266.]

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

|   |  |
|---|--|
| Alderson, Philip Robert, 53, Gloucester Place, Portman Square; Risby; and Park Street | James Sparke, Bury Saint Edmund's      |
| Burridge, Arthur, Bradford; and Yeovil  | George B. Gregory, Bedford Row         |
| Byan, William Henry, 80, Bishopsgate Street; Church Row; and Islington                | Thomas Lyon, Yeovil                    |
| Hinton, Richard Thomas, Wenlock   | Richard John Bridges, Bristol          |
|   | Humphrey Hinton, Wenlock               |
|   | Robert Henry Baines, Verulam Buildings |
| Lowrey, Frederic, 23, Weston Place, Pancras Road                                      | John Lowrey, North Shields             |
| Story, John Mellor, 50, Lincoln's Inn Fields, and Hemingfield                         | Hen. A. de Medina, Thavies' Inn        |
| Templeman, John Marsh, jun., Crewkerne  | John Birks, Hemingfield                |
| Walpole, William Sturman, 22, Clarendon Square; Norwich; and Beyton Lodge.            | John M. Templeman, sen., Crewkerne     |
|   | Jonas Walpole, Northwold.              |



## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS, VIZ.:—

## Lord Chancellor.

*Groom v. Stinton.* Nov. 2 & 3, 1847.

## VACATING INROLMENT OF DECREE.

*Service of notice of an order for rehearing the cause will not prevent the inrolment of the decree. The order must be passed, entered, and served before the docket has been signed.*

Mr. Rolt, with whom was Mr. Terrell, made the present motion, which was in the nature of an original application, for vacating, under the following circumstances, the inrolment of the decree pronounced in this cause by the Vice-Chancellor of England. On the 7th of July last, the decree was left with the Chancellor's secretary, for his lordship's fiat for its inrolment. A caveat having been previously entered, the fiat was suspended for 28 days, viz., until the 5th of August following. Notice of the defendant's intention to appeal had also been given to the plaintiff's solicitor. On the 2nd of August, a petition of appeal was presented by the defendant, and the fiat for rehearing affixed on the same day. The petition was answered by his lordship's secretary on the 3rd, and the order to set down the appeal for rehearing was left with the registrar on the 4th, the common undertaking given for payment of the costs, and the usual sum of 20*l.* deposited. As this order could not be passed and entered before the next day, the defendant, between 9 and 10 o'clock on the following morning, gave notice to the plaintiff, that the order for rehearing had been obtained, and that it would be duly served as soon as it could be passed and entered. About 11 o'clock on the same morning, his lordship affixed his signature to the docket of inrolment, and between 12 and 1 o'clock on the same day, the order for rehearing having been duly passed and entered, was served upon the plaintiff's solicitor. Under these circumstances, the learned counsel submitted that the inrolment would be vacated; and they referred to *Robinson v. Newdick*, 3 Mer. 13.

Mr. James Parker opposed the motion, and urged that not only must the petition for rehearing be presented and answered, but the order for rehearing must also be passed, entered and served, and that service of notice that such order had been obtained was not sufficient. *Dearman v. Wych*, 4 Myl. & Cr. 550; *Stevens v. Guppy*, there referred to; *Barnes v. Wilson*, 1 Russ. & Myl. 486.

Mr. Amphlett, on the same side, cited *Wardle v. Carter*, 1 Myl. & Cr. 283.

Mr. Rolt, in reply, contended that the order for rehearing had been actually made before

the docket for inrolment had been signed, and that the plaintiff had received notice of it.

Nov. 3. The Lord Chancellor, after referring to the case of *Robinson v. Newdick*, and distinguishing it from the present, remarked, that the cases and practice had been reviewed by him in *Dearman v. Wych*, (supra,) where he had laid down a principle from which he was not now inclined to depart. He thought there was no foundation for the present motion, and that it must be dismissed with costs.

*Fisher v. Fisher.* May 22, 1847.

## EVIDENCE OF INSOLVENT PLAINTIFF.

*A plaintiff who has become insolvent during the suit cannot be examined by his assignees as a witness in their bill of revivor and supplement in the cause.*

THIS was an appeal from Vice-Chancellor Wigram, and the case is reported in the last volume of the Leg. Ob., p. 597, where his Honour's judgment will be found at length.

Mr. J. Russell and Mr. Sidney Smith appeared for the plaintiffs, and argued in support of the motion. In addition to the cases mentioned in the above report, (supra,) they referred to *Goss v. Tracy*, 1 P. Wms. 287, and *Huws v. Hand*, 2 Atk. 615.

The Lord Chancellor, without hearing Mr. Bagshawe, who opposed the motion, said, that the only point for consideration was the practice of the court, which was founded upon the plaintiff being still a party to the record, and not because he was objectionable on the ground of interest. No cases had been produced in which a co-plaintiff had been permitted to be examined by and for a co-plaintiff. There were several cases against it. Lord Denman's Act, (6 & 7 Vict. c. 85,) had nothing whatever to do with it. The practice that no party to the record could give evidence had been settled ever since 1785, when it was held to be so in a case of bankruptcy which would be more favourable than in the present case of insolvency. In the case alluded to, (*Hewatson v. Tookey*, 2 Dick, 799,) Lord Kenyon, when Master of the Rolls, had, in the first instance, allowed a motion for such an examination, upon the authority of a case of *Troughton v. Getley*; but from the report of the case by Mr. Dickens before Lord Thurlow, it appeared that his lordship reprobated the decision, as all rule and principle were against it. Many cases in Dickens were open to objection, but in many he investigated the practice, and reported it to the court, and these cases have always been considered very valuable. This was one of them. In *Buer v. Atkinson*, 2 Cox, 293, and which occurred nine years afterwards, Lord

Kenyon thought it necessary to strike out from the bill the name of the plaintiff whose evidence was required, and he must therefore have thought that the evidence could not be received whilst such plaintiff was a party to the record. His lordship then remarked, that the principle was not merely founded upon a decision of Lord Thurlow and Lord Kenyon, but was established by a long course of practice. He could not depart from the practice of the court which had been established for sixty years, and he refused this motion with costs, because there was a decided case against it, and because he thought it was contrary to the practice of the court.

### Rolls Court.

Ottley v. Gray. Dec. 1, 1846, and Aug. 3, 1847.

#### COSTS.

*Where a suit was prolonged for the sake of the costs, after the question in dispute between the parties had in effect been decided, the court refused to give costs on either side.*

THIS suit was instituted for the purpose of obtaining payment of the amount due upon a policy of insurance effected in the Protector Insurance Office, on the life of the plaintiff's brother, and which had been assigned to the plaintiff by way of security. The policy was effected in July, 1836, and in February, 1842, the plaintiff gave notice to the office of its being deposited with him, and shortly afterwards the assignment was made, by which it was declared that the receipt of the plaintiff should be a full discharge for any monies that might become payable in respect of the policy, and that it should not be necessary for the office to have the concurrence of any other party for any payments that might be made by the directors on account of it. In May, 1843, the brother died, having left a will and appointed an executor, and in about a month afterwards the plaintiff applied for payment of the amount due on the policy, and at the same time furnished the office with a copy of the assignment. Several letters then passed between the solicitors for the plaintiff and the office, and ultimately the office refused to satisfy the claim without having a discharge from the executor, whereupon the present suit was instituted. At first the executor was not made a party, but he was afterwards brought before the court by supplemental bill, and the objection made by the office being thus removed, the only question was, upon whom the costs of the suit should fall.

Mr. Kindersley and Mr. Heathfield, for the plaintiff, insisted, that as a full copy of the assignment was furnished to the office, and that contained an absolute discharge for any payment they might make in respect of the policy, there was no pretence for their requiring the concurrence of the executor.

Mr. Turner and Mr. Stevens, contra, urged, that as the policy was a mere chose in action, it

was not assignable, and that the office would not have been safe in complying with the plaintiff's request. The question, as regarded the costs, was, who was right and who wrong at the filing of the bill? (*Bushman v. Morgan*, 5 Sim. 635,) and that question was answered in favour of the defendants by the fact of the plaintiff having subsequently made the executor a party to the suit.

The *Master of the Rolls* said, the only question was as to the costs of the suit. His lordship then stated the facts of the case and continued:—The letters were not quite such as might have been expected on the part of the office; there was some reserve; but in the end they only required a concurrent discharge from the executor. On the part of the plaintiff it was said, that according to the construction of this deed, in which assignment, and trust, and mortgage were combined, the concurrence of the executor was unnecessary, and the suit was instituted on this foundation. It was clear, however, the bill was filed in error, for the original claim was given up, and a supplemental bill was filed making the executor a party. Then it was said, the plaintiff refused to give an indemnity on the ground of its binding up the assets; but there could be no such binding up if there were no risk. His lordship added, he thought the suit might have been avoided, but he would look through the pleadings and evidence before deciding the question of costs.

*August 2nd.* Lord Langdale, after recapitulating the facts of the case, said, that when the supplemental bill was filed to bring the executor before the court, the question between the parties was really at an end. The subsequent continuance of the suit was only for the sake of victory and for costs. He had deferred judgment for a long time, in the hope that the parties would come to some arrangement, but as they had not done so, he should order payment of what was due on the policy, and give no costs on either side.

### Vice-Chancellor Knight Bruce.

*Parker v. Constable, Same v. Sturgis.* July 15, 1847.

#### SUPPLEMENTAL BILL.—INSOLVENT.—ASSIGNEE.

*Where a supplemental bill had been filed against the general assignee of insolvent debtors, and a creditor's assignee was appointed only ten days before the hearing of the original cause, and two years after the appointment of the general assignee, and both causes were set down for hearing, Held, that a supplemental bill against the creditor's assignee was necessary.*

THESE causes coming on to be heard, the defendant, Mr. Sturgis, the general assignee, did not appear. The counsel for the defendant, Constable, objected, that on the 17th of June, 1847, her solicitor, Mr. Kirk, had been appointed her assignee, in the place of Mr. Sturgis.

Mr. *Swanston* and Mr. *Steere*, for the plaintiff, stated, that the defendant, *Constable*, became insolvent on the 19th of April, 1845; that she had been continued a defendant ever since, being the executrix of the testator; and that Mr. *Kirk* was then, and had acted throughout, as her solicitor; that witnesses had been examined, and that the causes were set down to be heard on the 21st of May, 1847,<sup>a</sup> publication having passed in all the causes on the 19th of June, 1847. The defendant's counsel produced the appointment, on parchment, of Mr. *Kirk* as assignee, in the place of Mr. *Sturgis*.

Mr. *Russell* and Mr. *Taylor*, for the defendant, the insolvent debtor, in answer to an application by the plaintiff's counsel and the inquiry of the court, declined to appear for Mr. *Kirk*, without a supplemental bill being filed against him.

Sir *J. L. Knight Bruce*, V. C., said, he considered that appointments of this kind were exceptions to the ordinary rule. The legal estate must be considered as having passed to Mr. *Kirk*, and, in his opinion, a supplemental bill was necessary. The costs of the day must stand over.

### Queen's Bench.

(Before the Four Judges.)

*In re Macey. Wood v. Lord Portarlington.*  
Nov. 2, 1847.

#### STRIKING ATTORNEY OFF THE ROLL.

Having reported the judgment of the court by which Mr. *Macey* was ordered to be struck off the Roll in Trinity Term last,<sup>b</sup> it is but an act of justice to state the grounds of the application on his part to review the decision, although the court has not yet determined the question.

Sir *Fitzroy Kelly* said, that *Macey* was attorney for the defendant in the case of "*Wood v. the Earl of Portarlington*," an action for the recovery of the amount of two acceptances by the late earl, given some years ago to the plaintiff. It was alleged that Mr. *Macey*, while breakfasting at Brighton with one *Wallis*, in the presence of the attorney for *Wood*, just before the cause came on for trial at Lewes, put into *Wallis*'s hand a written paper, containing a suggestion that he, *Wallis*, had heard the plaintiff admit that the consideration for the bills was a gambling transaction; and that at the bottom the sum of 5*l.* was mentioned, so as to imply that that amount of money would be given for evidence to the

effect indicated: whereas, in point of fact, *Wallis* knew nothing of any such admission, and had never led Mr. *Macey* or any other person to suppose that he could prove any such admission. At the time that the matter came before the court, Mr. *Macey* could not recall to his mind the quarter from whence he derived the information upon which he had acted, and was, therefore, silent on that point in the affidavit put in in exculpation; and considerable stress was laid by Lord Denman upon that silence.

Since that period Mr. *Macey* had been enabled to place the matter in a very different point of view. Mr. *Pyne*, for many years of the firm of *Pyne and Richards*, who had been dangerously ill, but having recovered, had now come forward and deposed to facts to the effect following:—That *Pyne and Richards* were solicitors to the late Earl of Portarlington; that the noble earl wished him (Mr. *Pyne*) to undertake the case relative to these bills, stating that *Wood* was the proprietor or keeper of a gaming-house in St. James's; but as personal exertion was necessary, and Mr. *Pyne* having been threatened with paralysis, he recommended the noble earl to employ Mr. *Macey*; that *Wallis*, at the time spoken of, was managing common-law clerk to *Pyne and Richards*, and, as such, would be necessarily cognisant of all the business of that kind coming into the hands of the firm. That the noble earl told deponent at the time, five or six years ago, that the consideration for the bills was a gambling transaction; and that the plaintiff himself had made an admission, in *Pyne and Richards*'s office, to the same effect, in the presence of *Wallis*. These facts had been communicated to Mr. *Macey* by Mr. *Pyne*, and, of course, had made a due impression, except that Mr. *Macey* did not, when taken at a nonplus, recollect their source.

The court would therefore perceive that however open that gentleman might be to the imputation of forgetfulness, or even negligence, he had done no wrong in making the proposal to *Wallis*, inasmuch as he had reason to think that that person could help his client to an effective defence to the action. In addition to the affidavits to these facts he also had others from persons of great respectability, setting forth that the deponents had known Mr. *Macey* for a number of years, and that he had always borne a high character for integrity, &c. As to the memorandum of the 5*l.* at the bottom of the paper, Mr. *Macey* deposed that he did not know why it had been put there, or what it meant.

Lord *Denman*.—The memorandum was, "*Query. 5*l.**" Have you anything on this point?

Sir *F. Kelly*.—Only that *Macey* swears he never intended to make any offer of money for improper swearing. Under all these circumstances I trust your lordships will see reason to re-consider this painful case. Mr. *Pyne* is quite ready to be examined in any way the court may think proper, and so are the other

<sup>a</sup> Publication was enlarged several times by the Master, and ultimately he made it a condition that the plaintiffs should be at liberty to set down the cause notwithstanding. In consequence of the rapidity with which the business of the court was transacted, the cause came into the paper before the depositions could be obtained.

<sup>b</sup> See 34 L. O. 328.

parties. It is quite right that the profession should be guarded from dishonour, but that task may be safely left to the Incorporated Law Society. Certainly Mr. Macey has shown very strong reasons why he ought to be relieved from the terrible consequences of the court's decision.

Lord Denman.—The court think that it is not advisable to make any remarks on the case at this moment, though many suggest themselves to the mind. It will be proper to look at the affidavits before coming to a determination.

*Dew v. Harris.* M. T. 1847.

AGREEMENT.—TIME.—APPOINTMENT OF REFEREE.

*An agreement to appoint referees on a day certain includes in it the notification of that appointment by each party to the other. When therefore the appointment was made by one party on the stipulated day, but no notification was given of it to the other party till the next day : Held, that the agreement had not been complied with.*

THIS was an action on an agreement for the sale of a cropping of grass. The value of the cropping was to be ascertained by referees and umpires. The agreement stated that the plaintiff and defendant severally undertook to nominate and appoint a referee on the 31st of May, and that the referees were to choose an umpire between that day and the 3rd of June, on which latter day they were to proceed to a valuation. The cause was tried at the last assizes at Warwick before Lord Denman, when one of the issues being whether the plaintiff had nominated and appointed a referee within the meaning of the agreement, it was proved that the plaintiff had made the nomination on the 31st of May, but that it was not communicated to the defendant till the 1st of June. Upon this proof being given, Lord Denman told the jury that in his opinion nominating and appointing a referee within the meaning of this agreement included the giving notice of such nomination, and that consequently the plaintiff had not complied with the terms of the agreement, and on this issue the verdict must be for the defendant. The jury accordingly found a verdict for the defendant on the issue in question.

Mr. Whitehurst now moved for a rule to show cause why the finding should not be entered for the plaintiff, notwithstanding the verdict. He contended that upon this point there had been a misdirection of the jury. The plaintiff had the whole of the 31st of May within which to nominate the referees, and he could not be required to do anything besides making the nomination on that day, for if so he would then be deprived of a part of the day which otherwise ought to be entirely at his disposal for the purpose of making the appointment.

Mr. Justice Coleridge.—The direction of

Lord Denman appears to me to have been quite correct. It is assumed that the plaintiff had the whole of the 31st of May within which to appoint a referee, and that no part of that day could be required to be employed by him for any other purpose. But in my opinion he had the whole of that day to appoint the referee in a complete manner, and the appointment was not complete without being notified to the other party. Suppose both parties had chosen the same referee, opportunity ought to have been given for a change of choice ; or suppose there had been just and well-founded objections to the referee chosen by either party, surely the other party ought to have had the opportunity to object to him. No such opportunity was given him. The appointment was therefore incompletely made, and the direction was right, and the finding cannot be disturbed. The other judges concurred.

Rule refused.

*The Queen v. The Inhabitants of Hartpury.*  
Trinity Term, 1847.

PRACTICE.—SESSIONS.—SPECIAL CASE.

*Where a writ of certiorari has been granted to bring up an original order of removal, and also a special case from the Court of Quarter Sessions, the court will not permit any other objections to be taken than those reserved by the special case, although it was mentioned to the court when the writ was moved for, that it was intended to make such other objections to the order, and although the rule upon which the argument took place was to show cause why the original order, as well as the order of sessions, should not be quashed, the points reserved by the special case not applying to the original order at all.*

ON appeal against an order of two justices for the removal of a pauper from the parish of Monmouth, in the county of Monmouth, to the parish of Hartpury, in the county of Gloucester, the quarter sessions confirmed the order, subject to the opinion of this court on a case.

Mr. Greaves, in the following Term, moved for a writ of certiorari to bring up the original order of justices, and also the special case, and mentioned to the court, as was done in *Regina v. Heyop*,<sup>c</sup> certain objections which appeared on the face of the original order of removal, but which were not reserved by the case. The order and the case having been brought up in Trinity Term following, he obtained a rule calling upon the prosecutor to show cause why the original order, and also the order of sessions, should not be quashed.

Mr. Keating and Mr. Smythies now showed cause. The applicants are not entitled to be heard on any points which are not reserved by the special case. The rule is in the usual form. [Lord Denman, C. J. It gives notice of an

<sup>c</sup> 31 L. O. 577, and 2 New Sessions Cases

objection to the original order; the point reserved by the case does not apply to any objection to the original order.] The objection to the order was fully discussed before the sessions, but they declined granting any case on it, and only reserved a point on the sufficiency of the examinations and grounds of appeal.

Mr. *Greaves*, contra. The proper course has here been adopted. The objection to the order was mentioned to the court when the writ of certiorari was moved for. The Master certified that the motion was correct, and the writ was granted in open court. An objection arising on the face of the order need not be reserved by a special case. It is only necessary for the sessions to reserve objections which do not appear on the face of the order. This case is distinguishable from *Regina v. St. Anne's, Westminster*,<sup>d</sup> because there no mention was made of the other points at the time of moving for the certiorari, but the rule was for quashing the order on a ground in addition to, and independent of, the grounds reserved in the case.

Lord *Denman*, C. J. We must treat this case on general principles. When the sessions have decided a point, and granted a case, the writ of certiorari issues for the sole purpose of bringing the case up, that we may decide the question which is asked by the sessions, and that our answer may assist them in giving their

appeal, the court of quarter sessions might have refused to grant a case on the facts, unless the objections to the form of this order were withdrawn.

*Wightman and Erle*, J.s, concurred.

Judgment accordingly.

#### Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

*Ex parte Barnes*. Michaelmas Term. Nov. 2, 1847.

#### ATTORNEY.—RENEWAL OF CERTIFICATE.

*An attorney took out a certificate to practise for the first year after his admission; he afterwards neglected to do so for about ten years, during a great part of which time he acted as managing clerk in an attorney's office; he then gave the proper notices for the renewal of his certificate, under the rule of Easter Term, 1846, on the last day of the present Term, an application being now made under special circumstances for him to be permitted to take out his certificate at once.*

Held, that the court had no power to interfere and enable him to do so, but that he must wait until the last day of Term to make his application.

*Unthank* moved that Mr. Barnes, an attorney of this court, be at liberty forthwith to take out a stamped certificate to enable him to

otherwise, all the proceedings would be unravelled, and long arguments founded upon them, by which the time of the court would be entirely taken up, and the channels of justice obstructed. I think when a certiorari has issued to remove a case, that the points reserved by the case alone are before us; and that though the original order is mentioned in this rule, yet as no point upon it is reserved by the special case, we ought not to permit any objection to be now taken to it; and that the rule has been improperly drawn up, and ought only to have been granted on the points reserved by the case. This practice must be put an end to, and we will adhere to the rule laid down by Lord Ellenborough, C. J., in *Rez v. Guildford*.<sup>e</sup>

*Patteson*, J. I am of the same opinion. There has been some doubt as to the practice on this point. When a case has been reserved, it is not competent to go into any other points than those mentioned in the case: but it is said to be competent to take objections arising on the face of the original order. I think that this practice, which has only prevailed for a short time, is bad, and ought to be put an end to. We will only consider the points reserved by the case for this reason,—that if this point had been relied upon at the sessions, as it might have been under one of the grounds of

been admitted an attorney about eleven years since, and had then taken out a stamped certificate for one year; since that time he had not taken out any certificate, but had for a great part of the last ten years been engaged as a managing clerk in an attorney's office: he was now anxious to be allowed to renew his certificate, having the offer of a business at Stockport. He had given his notices, and they were all regular, for an application to the court on the last day of the present Term, pursuant to the rule of Easter Term, 1846; and the present application was one made to the court under the peculiar circumstances of the case, which were that the business which Mr. Barnes was anxious to take was that of a solicitor very recently deceased, and therefore it was of great importance that Mr. Barnes should be enabled to enter upon it at once. Under these circumstances it was submitted that the court in its discretion would dispense with the applicant's waiting until the last day of Term until his notices had expired, but would give him permission to take out his certificate at once.

*Patteson*, J.—Have I any authority to do this?

*Unthank*.—I have not been able to find any direct authority in point, but the rule 5 Reg. Gen. H. T. 6 W. 4, which requires the notices to be given "three days at least before the commencement of the term," by persons seeking to be admitted under that call, has been

<sup>d</sup> 33 L. O. 305, and 2 New Sessions Cases, 517.

dispensed with in the case of *ex parte Blurt*, (5 Dowl. 231,) and in the case of *ex parte French*, (Ib. 375,) an attorney was admitted without the usual notices under special circumstances. I am also informed there was a case in last Term of *ex parte Weymouth*,\* where the notices were dispensed with.

*Patteson, J.*—I will consult the Master about that case, and give my judgment tomorrow. At present I am of opinion that I have no authority on the subject.

*Cur. ad. vult.*

Nov. 3rd.

*Patteson, J.*—I find that the case of *ex parte Weymouth* is not quite a similar case to the one now before the court. There a gentleman had passed his examination, and had been admitted an attorney, but had neglected to take out his certificate within twelve months; he had, however, not practised, and under special circumstances the court dispensed with his giving the requisite notices under the rule of Easter Term, 1846. In the present case there has been a certificate taken out for one year and a practising under it, and the notices for the renewal of the certificate have been given in the regular way. Under these circumstances I do not think I have any authority to interfere. The party must wait until the last day of Term.

Rule refused.

(Before Mr. Justice Erle.)

*Johns v. Sanders.* Trinity Term, June 5th, 1847.

JUDGMENT OF NON PROS.—WHEN IT MAY BE SIGNED.

*The defendant obtained an order for particulars of the plaintiff's demand before declaration, with a stay of proceedings until delivery; and when two terms had elapsed without any delivery, he obtained an order to rescind his former order, and demanded a declaration, and after four days signed judgment of non pros. On a motion to set aside such judgment for irregularity:—*  
Held, that the judgment was regular.

THIS was a rule calling upon the defendant to show cause why the judgment of *non pros.* signed in this cause should not be set aside for irregularity. The writ of summons in this case having been duly served, an appearance was entered by the defendant on the 11th of August, 1846, who immediately afterwards took out a summons for particulars of the plaintiff's demand, whereupon, on the 14th of the same month, an order was made by the Lord Chief Baron for the delivery of such particulars, with a stay of proceedings in the meantime. The plaintiff not complying with this order, the defendant, on the following 24th of February, applied for and obtained an order of Mr. Justice Erle, that he (the defendant) "should be at liberty to proceed in this action, notwith-

standing the order made herein on the 14th of August, 1846." Upon being served with this order, the plaintiff took out a summons for time to declare, which was dismissed on the ground of its being premature, as there had been no demand of declaration. On the following 28th of February the defendant obtained an order rescinding the order of the Lord Chief Baron of the 14th of August, and on serving the same upon the plaintiff's attorney, he served also a demand of declaration, which not being delivered, the defendant on the 4th of March signed judgment of *non pros.* The ground upon which the present rule was obtained was, that during the existence of the order for particulars of demand, time did not run against the plaintiff.

*Cowling*, who showed cause, contended that, inasmuch as the delay in delivering the particulars was the plaintiff's own neglect, he ought not to be permitted to take advantage of his own wrongful act, and that time, therefore, was against him. *Kirby v. Snowden*, 4 Dowl. 191.

*Petersdorff*, contra, argued that the order for particulars being a bar to all further proceedings until they were delivered, the plaintiff had the same time after the order was set aside, that he had before it was made; the general rule being that where proceedings are stayed, they are to be resumed at the point at which they were arrested. 13 Car. 2, stat. 2, c. 2, s. 3.

*Cur. adv. vult.*

*Wightman, J.* (delivering the judgment of Erle.) In this case the defendant had obtained an order for particulars of the plaintiff's demand before declaration, with a stay of proceedings until delivery, and when two terms had elapsed without any delivery, he obtained an order to rescind the former order, and demanded a declaration, and after four days signed judgment of *non pros.* The plaintiff has moved to set aside this judgment, contending that he had the same time for declaring after the order rescinding the order for particulars had been obtained, as he had when the order for particulars was obtained. But I am of opinion that the judgment is regular. The non-delivery of particulars by the plaintiff was a default on his part, and his default does not deprive his opponent of any benefit from the lapse of time.

Rule discharged, with costs.

Common Pleas.

*Grand Junction Waterworks Company v. Roy.*  
Trinity Term, 1847.

WRIT OF SUMMONS.—SERVICE OF.—ENTERING APPEARANCE.

*The admission by the defendant, an attorney carrying on business in London, of the receipt of an original writ of summons, issued into Middlesex, and a copy, both having been sent by post, accompanied by the defendant's promise to enter an appearance, is not sufficient to entitle a plain-*

\* Reported in the Legal Observer for July 18, 1847.

*tiff to more than a rule nisi to enter an appearance for the defendant.*

Scotland moved, on behalf of the plaintiffs, for leave to enter an appearance for the defendant. The affidavit in support of the motion stated that a writ of summons had been issued into Middlesex against the defendant, an attorney carrying on his business in London. The original writ and a copy were sent by post to the defendant's place of business, and thereupon the defendant went to the office of the plaintiffs' attorney, admitted the receipt of the writ and copy, and promised to enter an appearance. Shortly after, no appearance having been entered, the plaintiffs' attorney called and saw a partner of the defendant at their office, who said that the defendant had requested him to attend to the business, which he would do. Neither the writ nor copy were retained by the defendant, and no appearance had been entered.

Wilde, C. J. As a general rule, the judges will not allow any equivalent for personal service in cases of this kind. The writ, admitted in the present case to have been received, is sent into a different county from that in which it could properly be served, and there is no good reason why personal service should not have been effected. The affidavit does not disclose more than sufficient to entitle the plaintiff to a rule nisi to enter an appearance.

Rule nisi accordingly.

### Exchequer.

Garwood v. Ede. Michaelmas Term, Nov. 3, 1847.

#### RAILWAY COMPANY.—DEPOSIT.—ALLOTTEE OF SHARES.

*An allottee of shares in a projected railway company paid the deposit, and signed the parliamentary contract and subscribers' deed, whereby he authorised the directors to apply the money which should come to their hands for deposit, as required by parliament, or for salary or expenses, as they should think fit. The company was afterwards abandoned:—Held, that the plaintiff could not recover back the deposit.*

This was an action for money had and received for the use of the plaintiff. The defendant pleaded non assumpsit.

At the trial before the Lord Chief Baron at the London sittings after Trinity Term, it appeared that the action was brought against the defendant as one of the provisional committee of a projected railway, to be called the "Direct Western Railway," to recover back the deposit paid upon the allotment of shares. The usual prospectus had issued, stating the capital of the company to consist of 3,000,000*l.* in 12,000 shares, of 25*l.* each. The plaintiff applied for shares, and in answer received a letter of allotment for 20 shares, and he paid the deposit of 2*l.* 12*s.* 6*d.* per share. The company was afterwards abandoned. The plaintiff had signed the parliamentary contract, and also the subscribers' deed. This deed, which was be-

tween the shareholders, the provisional committee, and the trustees, gave to the directors full power to carry the undertaking into effect, or to abandon it; to apply at that or at any other session for an act of parliament; to pay monies which should come to their hands for deposit required by the standing orders of the Houses of Parliament, or for salary or expenses, as they should think fit. The Lord Chief Baron thought that the deed prevented the plaintiff from maintaining the action, and directed a verdict for the defendant, at the same time reserving leave for the plaintiff to move to enter a verdict for him, if the court should be of opinion that he was entitled to recover.

Knowles now moved accordingly. It is admitted that the plaintiff cannot recover back that part of the deposit which was paid for general purposes, for the deed authorised the directors to apply it as they thought fit; but with respect to so much of the deposit as was paid for a specific purpose, they had no power to retain it. The 7 & 8 Vic. c. 110, s. 23, requires a deposit of 10 per cent. That is for the protection of the shareholders, and if the company is abandoned it ought to be returned to them. A shareholder cannot give the directors any authority to apply the money to any other purpose than that required by the act of parliament.

Pollock, C. B. This case is distinguishable from *Walstabb v. Spottiswoode*, 5 M. & W. 501, for there the plaintiff paid money in order to obtain something which she did not get, and was therefore entitled to recover back the money paid as upon a consideration which failed. Here the defendant has executed a deed which gives him a joint interest with the defendant in the general adventure.

Parke, B. By the terms of the deed, the plaintiff has agreed that the money paid by him as deposit may be applied by the directors to payment of any expenses. Suppose the terms of the deed had been that the directors should receive 10 per cent. to be applied as required by the act of parliament, and that if the company was abandoned they might pay it in liquidation of any expenses, how could the plaintiff recover it back? This was in effect the same, and there never was a sum of money received by the defendant for the use of the plaintiff.

Alderson, B. Why may not a shareholder agree by deed that the directors of a projected company may dispose of the monies paid as deposit in any way they may think fit.

Rolfe, B., concurred.

Rule refused.

### Bankruptcy.

Nicholson v. Pink. October 12th, 1847.

TRADER DEBTOR'S SUMMONS UNDER 5 & 6 VICT., c. 122.—AFFIDAVIT OF GOOD DEFENCE TO PART, WITHOUT ADMITTING RESIDUE.

*An affidavit in which the defendant deposes to a good defence as to part only of a debt,*



*and makes no admission as to the residue, is not in compliance with the provisions of the statute 5 & 6 Vict. c. 122, and amounts to an act of bankruptcy on the part of the debtor.*

THE trader, John Pink, who was described as, of and carrying on business at the Lord Hill public-house, Westbourne Park, in the county of Middlesex, was served with a summons under the 5 & 6 Vict. c. 122, by William Nicholson, and William Nicholson the younger, who claimed, by their particulars of demand, from the trader (Pink) a debt amounting to 436*l.* 17*s.* 2*d.* Pink appeared by counsel before Mr. Commissioner Shepherd, at the time appointed by the summons, and stated that he had filed an affidavit, in the form provided by the Act. [Schedule B. No. 2.] The affidavit was as follows.—“Thomas Pink of, &c., being sworn, &c., upon his oath saith, that he verily believes he has a good defence to 56*l.* 6*s.*, part of the demand hereinafter mentioned of William Nicholson and William Nicholson the younger in the sum of 436*l.* 17*s.* 2*d.*, for a debt alleged to be due and owing from the said Thomas Pink to the said William Nicholson, and William Nicholson the younger, as stated in the affidavit of the said William Nicholson the younger, filed in this honourable court, and bearing date the 4th day of October, 1847. Sworn,” &c.

Upon motion to discharge the summons with costs, the question raised was, whether the affidavit, without more, was a sufficient compliance with the statute to prevent an act of bankruptcy?

Cooke, on behalf of the summoning creditor. Under the 12th section of the Act, the trader summoned is bound to state, “whether or not he admits the demand of such creditor so sworn as aforesaid, or any and what part thereof; and if such trader shall admit such demand, or any part thereof, to reduce such admission into writing in the form specified in the schedule.” [B. No. 1.] The 15th section then provides, that if the trader so summoned shall sign an admission for part only of such demand, and shall not make a deposition in

the form required, that he believes he has a good defence to the residue, then, upon failing to satisfy the debt, the trader shall be deemed to have committed an act of bankruptcy on the fifteenth day after service of such summons. The statute contemplated that the trader debtor should discharge himself from the whole demand, by admitting or denying the whole, or admitting a part and denying the residue, or denying a part and admitting the residue. Here the debtor swore to a good defence as to 56*l.* 6*s.*, leaving the balance of the demand unanswered. He denies a part and admits nothing.

Sturgeon, *contra*. The trader debtor has complied with the requirements of the Act. The 12th section provides, that “it shall be lawful for such court to allow such trader upon his said appearance to make a deposition upon oath, in writing under his hand, to be filed in such court, in the form specified in the schedule, [B. No. 2.] that he verily believes he has a good defence to the said demand, or to some and what part thereof.” The debtor has sworn to an affidavit precisely in the form prescribed, which is already filed. According to the arguments now used, the trader should sign an admission as to part of the debt, and make an affidavit of a good defence as to the residue, using the two forms specified in the schedule B. This has never been the practice.

Mr. Commiss. Shepherd observed, that if the arguments of the debtor’s counsel prevailed, a debtor prepared to deny only one shilling of a large debt, might render the Act inoperative. He could not conceive that such an absurd result was contemplated. As the practice, however, had been referred to, he should consult his brother commissioner who was then sitting. The learned commissioner afterwards stated, that Mr. Commiss. Evans entirely agreed with him, that the debtor had not complied with the Act, and he therefore refused to discharge the summons.

At the expiration of fifteen days from the date of the summons, a fiat issued against the trader Pink, who was adjudicated a bankrupt, upon an act of bankruptcy founded on this proceeding, and was gazetted on the 22nd October.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### REGISTRATION OF VOTERS AT ELECTIONS FOR MEMBERS OF PARLIAMENT.

[In commencing a New Series of the Analytical Digest, we select most of the decisions from the able report on *Registration Appeals* by Messrs. Manning, Granger, and Scott, to which we have added some cases which were first reported in the Legal Observer. The assembling

of the new parliament may render these adjudged points more than usually interesting.]

#### BIRTH RIGHT.

*Reserved Rights.*—*Burgesses or freemen by right of birth.*—The corporation of *M.* consists of four classes of burgesses or freemen,—1. Capital burgesses, (in whom alone was the right of voting prior to the passing of the Reform Act); 2. Assistant burgesses; 3. Landholders; 4. Free burgesses or commoners. Vacancies in the third class are supplied from



the fourth by seniority, and in the other classes respectively by election : *Held*, that one who was a member of the fourth class, by right of birth, before the 1st March, 1831, and became a "capital burgess" by election, after that day, is not disqualified as an elector by the 2 W. 4, c. 45, s. 32. *Gale*, App., *Chubb*, Resp., 4 C. B. 41.

#### BURGAGE TENURE.

*Freehold interest*.—A. claimed to vote in respect of a burgage tenement in an ancient borough. The case found, that burgage tenements within the borough had always been conveyed by deed of grant, or bargain and sale, without livery of seisin, and without a lease for a year, or any inrolment; that no surrender or admittance was required, nor was any fine paid upon descent or alienation; that the mode of descent was agreeable to the common law, except that females inherited, not as coparceners; but by seniority; that the interest of a *feme covert* was passed without any separate examination of the wife; that the widow of a person dying seised of a burgage tenement had the whole during her chaste widowhood; that burgage tenements had always been devisable in the same way as ordinary freeholds; that they were held subject only to the payment of certain fixed annual rents, payable to some individual; and that no other services had been performed, or payments made in respect of them:—

*Held*, that, in the absence of evidence on the face of the case to show that the freehold was in any other person, it must be assumed that A. had such a freehold tenure as to entitle him to be registered, the value being sufficient. *Busher*, app., *Thompson*, resp., 4 C. B. 48. See 2 W. 4, c. 45, s. 19.

#### DELIVERY OF PAPER BOOKS.

In registration appeals, the delivery of the paper books is a matter entirely within the discretion of the court, and where they had not been delivered to the judge's clerks four days before the first day of hearing the appeals, the court allowed the delivery of them *nunc pro tunc*, there appearing, from the position of the particular appeals in the list, to be sufficient time before they could be heard, and where the appeal stood fourth in the list, it was ordered to be put at the bottom. *Elliott v. The Overseers of St. Mary Within, Cumberland*; *Busher v. Thompson*; and *Gale v. Chubb*, 33 L. O. 191; S. C. 4 C. B. 76.

#### ENTERING APPEAL.

1. *Application to enter nunc pro tunc*.—Where it appeared that owing to delay on the part of the appellant's attorney, the requisite notice of appeal had not been procured, so as to be lodged with the Master within the first four days of the Term, as required by the 62nd section of the 6 Vict. c. 18, the court refused to allow the appeal to be entered *nunc pro tunc*. *Petherbridge*, app., *Ash*, resp., 23 L. O. 72; S. C. 4 C. B. 74.

2. *Entering an appeal after the 4th day of the Term*.—It is necessary that the indorsement required by the 42nd section of the 6 Vict. c.

18, should be signed by the revising barrister before the appeal from his decision can be properly entered. Where, however, it appeared that such signature could not be obtained in time to enter the appeal within the first four days of the Term, as required by the 62nd section, the court allowed a subsequent entry *nunc pro tunc*, the respondent being at liberty to object to such entry. *Pring*, app., *Estcourt*, resp., 33 L. O. 47; S. C. 4 C. B. 71.

#### INDORSEMENT OF APPEAL.

*Consolidated appeal*.—Who may be named as appellant.—The indorsement of an appeal not having been signed by the revising barrister until the 5th day of Michaelmas Term, the court refused to allow the appellant to be heard. *Quere*, Whether a mere agent, not personally interested in the subject-matter, can be named as appellant to prosecute a consolidated appeal. *Wanklyn*, app., *Wollett*, resp., 4 C. B. 86. See 6 & 7 Vict. c. 18, ss. 42, 44, 45.

#### NOTICE OF OBJECTION.

1. *Description of the objector*.—In a notice of objection, under the 6 & 7 Vict. c. 18, s. 17, the objector was described as, "R. F., of, &c., on the list of voters for the borough of L." The register of voters for the borough of L. consists of four separate lists, viz.:—one of 101 householders for each of three townships comprised in it; and one of the freemen of the borough. The objector's name was on the last-mentioned list only: *Held*, that he was insufficiently described in the notice; and that the inaccuracy of description was not cured by the 101st section. *Eidsforth*, app., *Farrer*, resp., 4 C. B. 9.

2. *Date and service of notice*.—A notice of objection under the 6 & 7 Vict. c. 18, s. 17, dated of the day and month, without the year, is insufficient. The list of voters was signed by three of the overseers and one of the churchwardens, and the service of the notice of objection was upon another churchwarden, who had not signed the list: *Held*, that the notice was well served. *Beenlen*, app., *Hockin*, resp., 4 C. B. 19.

3. *How addressed*.—A notice of objection addressed to the voter at A., described as his place of abode in the borough list, was left at his office in B. The office in B. was not the voter's place of abode, and he had no residence in A.

The revising barrister decided that the notice had not been given to or left at the place of abode of the voter as stated in the list, within the meaning of the 6 & 7 Vict. c. 18, s. 17.

*Held*, that his decision was correct. *Allen*, app., *Greensill*, resp., 4 C. B. 100.

4. *Description of the objector's place of abode*.—In a notice of objection, the place of abode of the objector was described as "The Oaks," (without the addition of any parish, township, or other district,) "on the register of voters for the parish of St. W." In the list of voters for the parish of St. W. the objector's

place of abode was described as "St. W.," and his qualifying property as "The Oaks."

*Held*, that the description was insufficient and could not be aided by a reference to the list of voters, so as to show that the place called "The Oaks" was in the parish of St. W.; and that the objection was not removed by the finding of the revising barrister that the place referred to was in fact in the parish of St. W. *Woollett*, app., *Davis*, resp. 4 C. B. 115. See 6 & 7 Vict. c. 18, s. 7.

#### NOTICE OF APPEAL.

1. *Postponing the hearing*.—The court will not postpone the hearing of an appeal, in order to afford time to give the necessary notice, upon a suggestion that the difficulty has arisen from the circumstance of their having appointed an unusually early day for the hearing of appeals; there having been ample time to give the notice between the day appointed and the day on which the decision of the revising barrister was pronounced. *Adey*, app., *Hill*, resp., 4 C. B. 38. See 6 & 7 Vict. c. 18, s. 62.

2. *Constructive appearance*.—An application by the respondent for leave to deliver paper books after the proper time, does not dispense with the notice required to be served upon him by the 6 & 7 Vict. c. 18, s. 62. *Grover*, app., *Bontems*, resp. 4 C. B. 70.

3. *Signature of appellant*.—The notice of the appellant's intention to prosecute his appeal under the 6 & 7 Vict. c. 18, s. 62, must be signed by the appellant himself; the signature of an agent will not suffice.

Where an appeal was tendered within the first four days of the term, with a notice imperfectly signed, the court refused to allow the appeal to be entered (the defect being cured) on the 5th day. *Petherbridge*, app., *Ash*, resp., 4 C. B. 74; see 6 & 7 Vict. c. 18, s. 62.

4. *Postponement of hearing*.—Where it appeared that ten clear days' notice of appeal had not been given to the respondent before the first day appointed by the court for the hearing of the appeals, the notice, however, having been served within the four first days of the term, the court refused either to hear the appeal, or to postpone the hearing under the discretionary power given by the 62nd sec. of the 6 & 7 Vict. c. 18, sufficient time for giving the notice having elapsed since the decision of the revising barrister, S. C. 4 C. B. 32. *Norton*, app., *the Town Clerk of Salisbury*, resp., 33 L. O. 114.

#### QUALIFICATION.

*House and shop not within one curtilage*.—*Appurtenances*.—A. occupied a shop, which, together with a house and other premises, also occupied by him, constituted a sufficient qualification in point of value, but neither being sufficient alone. The shop was separated from the rest of the premises by a yard, in the exclusive occupation of A., but there was no complete curtilage or fence surrounding the whole, the yard being approached by a passage at the side of the shop, open to the street, which was

also the property of A., but used by the tenant of the adjoining house in common with him : —*Held*, that the shop could not be joined with the other premises, so as to constitute one entire qualification under the statute 2 W. 4, c. 45, s. 27. *Powell*, app., *Price*, resp., 4 C. B. 105; see 2 W. 4, c. 45, s. 27.

#### RENT CHARGE.

*Seisin in law*.—*Actual possession*.—The assignee of a rent-charge is not entitled to be registered, unless he has been in the actual receipt of it for six months before the last day of July. *Hayden*, app., *Twerton*, resp., 4 C. B. 1. See 2 W. 4, c. 45, s. 26.

#### SCOT AND LOT.

*Reserved rights*.—A party entitled, before the passing of the 2 Wm. 4, c. 45, to vote as an inhabitant householder paying scot and lot, does not, by the 33rd section of that act, lose his qualification by having omitted for one year to pay his rates before last day of July. *Nicks*, app., *Field*, resp., 4 C. B. 63.

### CHANCERY CAUSE LISTS.

Michaelmas Term, 1847.

AT WESTMINSTER.

Lord Chancellor.

#### APPEALS.

|                    |                           |
|--------------------|---------------------------|
| Wood               | Rowcliffe, 2 appeals.     |
| Fuller             | Willis, relig.            |
| { Lancaster        | Evors }                   |
| { Ditto            | Morley }                  |
|                    | appeal                    |
| Swinerton          | Heming, do.               |
| Sharp              | Taylor, do.               |
| Fordyce            | Bridges, do               |
| Lancashire         | Lancashire, do.           |
| S. O. { Hodgkinson | Hodgkinson }              |
| { Ditto            | Jackson }                 |
|                    | appeal.                   |
| Crockett           | Crockett do.              |
| { Ware             | Rowland }                 |
| { Ditto            | Wilson }                  |
|                    | 2 appeals.                |
| Trulock            | Robey, appeal.            |
| { White            | Briggs }                  |
| { Ditto            | Wardroper }               |
| { Ditto            | White }                   |
| { Ditto            | Ditto }                   |
|                    | appeal.                   |
| { Groom            | Stinton }                 |
| { Ditto            | Edmonds }                 |
| { Ditto            | Stinton }                 |
| { Ditto            | Ditto }                   |
|                    | appeal.                   |
| Alfrey             | Allfrey, 3 causes appeal. |
| { Wilson           | Wilson }                  |
| { Ditto            | Ditto }                   |
| { Ditto            | Foster }                  |
|                    | appeal.                   |
| { Nightingale      | Goulbarn }                |
| { Whittington      | Nightingale }             |
| Axe                | Andrews do.               |

#### Master of the Rolls.

#### PLEAS AND DEMURRERS.

*Stand over*, *Dean of Ely v. Gayford*, six pleas.  
*Wenham v. Bowman*, dem.

## CAUSES.

*Short line*, Elderton *v.* Lack.  
*Part heard*, Churchman *v.* Capon, fur. dirs. and costs.  
*Easter Term*, Same *v.* Same, supple.  
*To present petition*, Stourton *v.* Jerningham.  
*Part heard*, Attorney-General *v.* Wright, fur. dirs. and costs.  
 Same *v.* Same, supple. bill.  
*First cause day after Term*, Hooper *v.* Denoon,  
*Short line* { Attorney-General *v.* Gilbert.  
 Same *v.* Birmingham School.  
*S. O.* Short, Holloway *v.* Jacobs,  
*To come on with the fur. directions.* { Leake *v.* King  
 Same *v.* Snow } exons.  
 Same *v.* Bridger }  
*S. O.* to amend, Williamson *v.* Gordon.  
*First cause day* { Gibbins *v.* The Board of Management of the North Eastern Metropolitan Asylum district and another.  
 Davis *v.* Hotchkiss.  
 { Leake *v.* King  
 Same *v.* Snow } fur. dirs. and costs.  
 Same *v.* Bridger }  
*Part heard*, Sanderson *v.* Dobson, fur. dirs. and costs.  
 Ashwell *v.* Taylor.  
*First cause day*, Knight *v.* Knight.  
*S. O.* { Murray *v.* Scarborough } fur. dirs. and costs.  
*Short*, { Same *v.* Crafton } costs.  
*S. O.* part heard, { Hemming *v.* Archer  
 Same *v.* Same. } fur. dirs.  
 Same *v.* Same. } and  
 Same *v.* Same. } costs.  
 Raworth *v.* Same.  
 Master *v.* Marquis de Croismare, fur. dirs. and costs.  
 Pelly *v.* Hall.  
 { Dibbs *v.* Goren } fur. dirs. and costs.  
 Same *v.* Dibbs }

## NEW CAUSES.

Tugwell *v.* Hooper.  
 Glover *v.* Rogers.  
 Sinderson *v.* Williams.  
 { Greedy *v.* Lavender }  
 Same *v.* Owen }  
 Same *v.* Parrott }  
 { Knight *v.* Majoribanks }  
 Same *v.* Same }  
 Same *v.* Gibbs. }  
 Hooper *v.* Salmon.  
 { Page *v.* Broom }  
 Same *v.* Page }  
 Same *v.* Harris } exceptions.  
 Same *v.* Edwards }  
 Same *v.* Broom }  
 Same *v.* Whitmore }  
 Same *v.* Markland }  
 M<sup>c</sup>Michael *v.* Kipling, exceptions.  
 { Hudson *v.* Twining } fur. dirs. and costs.  
 Heathcote *v.* Same }  
 { Attorney-General *v.* Churchill }  
 Same *v.* Same }  
 Boobyyer *v.* Boobyyer.  
*First cause day*, Philipe *v.* Watkins pro confesso.

## Vice-Chancellor of England.

## PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

Haddan *v.* Smith, dem.  
 Holroyd *v.* Griffiths, exons. as to pleading.  
 Gough *v.* Bult, dem.  
 Joseph *v.* Belcher, dem.  
 Harris *v.* Brunton, plea.  
 { Myers *v.* Macdonald }  
 Ditto *v.* Stratford }  
 Macdonald *v.* Myers, by order.  
*S. O. G.* Wastell *v.* Lealie, 8 causes, exons. and fur. dirs.  
 { Attorney-General *v.* Grainger }  
 { Governors of Christ's Hospital } pt. hd.  
 v. Grainger  
 Webb *v.* Webb.  
 { Hiles *v.* Moore }  
 Same *v.* Gleadow }  
 Same *v.* Moore }  
 Steward *v.* Forbes.  
 Anning *v.* Hurley, fur. dirs. and costs.  
 Rand *v.* M<sup>c</sup>Mahon, exons. 2 setts, and fur. dirs.  
 { Hickson *v.* Mainwaring. }  
 Same *v.* Smith }  
 Haygard *v.* Anderton, fur. dirs. and petn.  
 Carter *v.* Barnard.  
 Strother *v.* Dutton, exons.  
 Walsh *v.* Trevanion, 3 causes.  
 Jarvis *v.* Wardale.  
 Sewell *v.* Murray, otherwise Clarke, 4 causes.  
 Smith *v.* East India Company.  
 Edge *v.* Duke.  
 Hodge *v.* Churchward.  
 Petre *v.* Petre.  
 M<sup>c</sup>Nair *v.* Brehner  
 Tanner *v.* Tanner.  
 { Hitchcock *v.* Jaques, fur. dirs.  
 Ditto *v.* Burt, cause.  
 Cork *v.* Spain.  
 { Brown *v.* Robertson }  
 Ditto *v.* Brown }  
 { Smith *v.* Plummer }  
 Ditto *v.* Smith }  
 Edwards *v.* Barker.  
 Bushell *v.* Giles, 2 causes.  
 Rackshaw *v.* Meacher.  
 Hopkinson *v.* Metaxa, fur. dirs. and costs.  
 Warne *v.* Wratten.  
 Chancellor *v.* Morecraft.  
 Gallafent *v.* Brown.  
 Fanshawe *v.* Walter.  
 Clark *v.* Wyburn.  
 Simpson *v.* Ramsden.  
 Wilcocks *v.* Butcher, exons.  
 Swift *v.* Grazebrook, exons. and fur. dirs.  
 Short, Law *v.* Rendle.  
 Pesterre *v.* Willis, 2 causes.  
 Stiles *v.* Guy, exons. 2 setts, and fur. dirs.  
 Chambers *v.* Siggers.  
 Rice *v.* Gordon, 5 causes.  
 Short, Robert *v.* Sneed.  
 Attorney-Gen. *v.* Lord Clifton.  
 Vaughan *v.* Rogers, 3 causes.  
 Mills *v.* Smith.  
 Suter *v.* Seamark.  
 Bird *v.* Ford.

**Vice-Chancellor Knight Bruce.**

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

- Gibbon *v.* Fletcher, defendant's objection as to parties.  
 Holte *v.* Entwisle, dem.  
 Jones *v.* Harrison, ditto.  
 Armiger *v.* Earl Spencer, ditto.  
 { Dodsworth *v.* Lord Kinnard, at request of deft.  
 { Ditto *v.* Ditto.  
 Smith *v.* Smith, 3 causes.  
 S. O. Bonsfield *v.* Mould, 2 causes pt. hd.  
 Watson *v.* Spottiswood.  
 S. O. Schofield *v.* Calhuac.  
 Robinson *v.* Bodkin.  
 S. O. { Parker *v.* Constable.  
 { Ditto *v.* Sturges.  
 Banks *v.* Whittall.  
 Callow *v.* Howle.  
 Pigg *v.* Bradley.  
 Brooks *v.* Coe.  
 Shaw *v.* Sykes.  
 Shackleton *v.* Sutcliffe.  
 Reeve *v.* Richer.  
 Bull *v.* Bonfield.  
 Johnson *v.* Johnson, fur. dirs. and costs.  
 Nov. 8th, Nott *v.* Nott.  
 Wilkinson *v.* Leak, exons.  
 { Glover *v.* East.  
 { Ditto *v.* Ditto.  
 Bull *v.* King.  
 Revans *v.* Bird, 2 causes.  
 Yates *v.* Plumbe  
 { Butter *v.* Vernon } fur. dirs. and costs.  
 { Harward *v.* Butter } ditto.  
 Felstead *v.* Yorke,  
 Harrison *v.* Smith,  
 Hobhouse *v.* Holcombe.  
 Orlby *v.* Jenkins.  
 Smith *v.* Warr.  
 Robinson *v.* Bell.  
 Clare *v.* Alexander.  
 Nov. 20th, Perryman *v.* Bell;  
 Ockleston *v.* Heap.

**Vice-Chancellor Stigam.**

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

- Menzies *v.* Desanges.  
 Attorney-General *v.* Ward.  
 To fix { Moor *v.* Vardon, }  
 a day { Ditto *v.* Lachlan. }  
 Ditto { Harvey *v.* Towell, } fur. dirs. and  
 { Ditto *v.* Gurney, } costs.  
 5th Nov. Parsons *v.* Muntz.  
 Harrop *v.* Howard, exons.  
 { Ditto *v.* Heywood, fur. dirs. and costs.  
 { Greenway *v.* Garvagh.  
 { Ryder *v.* Ditto.  
 Porter *v.* Troughton.  
 House *v.* Way.  
 Blann *v.* Bell.  
 Harper *v.* Langley.  
 S. O. Rogers *v.* Nowell, fur. dirs.  
 S. O. James *v.* Williams, exons. and fur. dirs.  
 Marsh *v.* Kingdon, fur. dirs. and costs.  
 { Erle *v.* Dyson } ditto.  
 { Ditto *v.* Ditto } ditto.  
 Clementi *v.* Fielding.  
 Kent *v.* Tapley.  
 Short, Clifton *v.* Pell.  
 Champneys *v.* Dobbs.  
 Wade *v.* Vernon, exons.  
 Rutt *v.* Wedd.  
 Curling *v.* Flight, exons.  
 S. O. East *v.* Hoare.  
 Savage *v.* Lane.

**Queen's Bench.—Crown Paper.**

Michaelmas Term, 1847.

- Bucks.—The Queen *v.* The Great Western Railway Company.  
 Same *v.* Same.  
 Warwick.—The Queen *v.* Thomas Collins, (part heard, to stand over till judgment given in Chancery.)  
 Birmingham.—The Queen *v.* Thomas Phillips and another, Justices, &c.  
 Middlesex.—The Queen *v.* The Inhabitants of St. George, Bloomsbury.  
 Cornwall.—The Queen *v.* the Inhabitants of Mylor.  
 Middlesex.—The Queen *v.* The Inhabitants of St. Clement Danes.  
 Cheshire.—The Queen *v.* The Inhabitants of Dukinfield.  
 Lancashire.—The Queen *v.* The Inhabitants of Leeds, Yorkshire.  
 Middlesex.—The Queen *v.* William Beaton.  
 Middlesex.—The Queen *v.* Charles Saffrey.  
 Middlesex.—The Queen *v.* Morris Myers.  
 Bucks.—The Queen *v.* The Churchwardens of parish of Ashe, Hants.  
 Middlesex.—The Queen *v.* The Inhabitants of Hammersmith.  
 Cheshire.—The Queen *v.* The Inhabitants of Macclesfield.  
 Staffordshire.—The Queen *v.* John Keen.  
 Carnarvonshire.—The Queen *v.* The Inhabitants of Holywell, Flintshire.  
 Cornwall.—The Queen *v.* Henry Nicholls.  
 Worcestershire.—The Queen *v.* The Commissioners of Dudley Improvements.  
 Lancashire.—The Queen *v.* James Lord.  
 Wilts.—The Queen *v.* The Inhabitants of St. Thomas, New Sarum.  
 Lindsey.—The Queen *v.* The Inhabitants of Coningsby.  
 West Riding, Yorkshire.—The Queen *v.* The Inhabitants of Carlton.  
 West Riding, Yorkshire.—The Queen *v.* The Inhabitants of Addingham.  
 Wilts.—The Queen *v.* The Inhabitants of Colerne.  
 Devonshire.—The Queen *v.* The Inhabitants of East Stonehouse.  
 West Riding, Yorkshire.—The Queen, *v.* The Inhabitants of Gomersal.  
 Leicestershire.—The Queen *v.* The Rev. E. B. Shaw, clk.  
 Middlesex.—The Queen *v.* The Commissioners of Stamps and Taxes.  
 Westmoreland.—The Queen *v.* Martin Irving, Esq. (Conv. of Anderson.)  
 Westmoreland.—The Queen *v.* Martin Irving, Esq. (Conv. of Robinson.)  
 Middlesex.—The Queen *v.* The Inhabitants of St. Pancras, (with Hackney.)  
 Middlesex.—The Queen *v.* The Inhabitants of St. Pancras, (with St. Luke.)  
 Surrey.—The Queen *v.* The London and South Western Railway Company.  
 West Riding, Yorkshire.—The Queen *v.* The Inhabitants of Monk Breton  
 Lancaster.—The Queen *v.* John Armitage.  
 Essex.—The Queen *v.* The Inhabitants of Witham.  
 Surrey.—The Queen *v.* The Inhabitants of Whitechapel, (Middlesex.)  
 Cornwall.—The Queen *v.* Richard William Riley.  
 West Riding, Yorkshire.—The Queen *v.* The Churchwardens, Overseers, and Inhabitants of Longwood.

- Devonshire.*—The Queen v. Wm. Warren & others.  
*England.*—The Queen v. James Chadwick.  
*Cambridge.*—The Queen v. The Inhabitants of Ashwell, Herts.  
*Surrey.*—The Queen v. Henry Chasemore.  
*West Riding of Yorkshire.*—The Queen v. The Inhabitants of Ovenden.  
*West Riding of Yorkshire.*—The Queen v. The Inhabitants of Aldborough.  
*Cheshire.*—The Queen v. The Inhabitants of Pott Shrigley.  
*Durham.*—The Queen v. Mayor, &c., of Sunderland.  
*West Riding, Yorkshire.*—The Queen v. James Preston.  
*West Riding, Yorkshire.*—The Queen v. Joseph Longbottom.  
*Lancashire.*—The Queen v. The Inhabitants of Sheffield (Settlement of Ann Kirby & Co.)  
*Lancashire.*—The Queen v. The same (Martha Lye, &c.)  
*Colchester.*—The Queen v. The Inhabitants of St. Giles.  
*Lancashire.*—The Queen v. The Overseers of Salford.  
*England.*—The Queen v. The Commissioners for England and Wales.  
*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Halifax (with Alnwick.)  
*Middlesex.*—The Queen v. The Inhabitants of Harrow on the Hill.  
*Kent.*—The Queen v. The Inhabitants of Chatham.  
*Worcestershire.*—The Queen v. John M. Cheek and another, Justices, &c.  
*Wills.*—The Queen v. The Inhabitants of Shepton Mallett.  
*Cheshire.*—The Queen v. The Inhabitants of Glossop.  
*Warwickshire.*—The Queen v. The Inhabitants of St. Michael, Coventry.  
*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Halifax (with Rishworth.)

## NISI PRIUS CAUSE LISTS.

REMANETS FROM TRINITY TERM, 1847.

## Common Pleas.

## Middlesex.

- |                       |                      |                               |                           |
|-----------------------|----------------------|-------------------------------|---------------------------|
| E. Smith              | Day                  | S. J. Daintree                | Prom. H. R. Hill          |
| J. Duncan             | Stead                | S. J. Williams                | Ca. Hodgson and B.        |
| Clayton and S.        | Hargrave             | S. J. Hargrave                | Prom. W. and R. B. Baker  |
| Richard and Collett   | Ward                 | S. J. Key                     | Ca. Woolley               |
| E. M. Elderton        | Newton               | S. J. Lord A. Conyngham       | Prom. Palmer and Co.      |
| Loveland              | Gilbert              | S. J. North                   | Dt. Capes and Stuart      |
| Capes and Stuart      | Tasker               | S. J. Groom                   | Covt. Fiddey              |
| Melton                | J. G. Fearn          | S. J. Countess Waldegrave     | Prom. Person              |
| Gell and Harwood      | Dickinson            | S. J. De Burgh                | Prom. Keane               |
| Capes and Stuart      | Joll and another     | S. J. Visct. Curzon           | Prom. Keane               |
| Burgoyne and Co.      | Kingdom              | S. J. Cox                     | Prom. W. & H. P. Sharp    |
| Skinner               | Bush                 | S. J. Sir W. Gossett & others | Powell and Co.            |
| Parker and Co.        | Taylor               | Eagle, Esq.                   | Prom. Bisgood             |
| Wilkinson C. and P.   | Alexander and others | S. J. Mangles and others      | Prom. Young, V. & Y.      |
| Same                  | Cuchow and others    | S. J. Same                    | Prom. Same                |
| Burgoyne and Co.      | Gardner              | Lord                          | Covt. Davies Son and Co.  |
| W. M. Wilkinson       | M. E. Smith          | S. J. D. T. Coulton           | Ca. Church                |
| Stuart                | Alton, assignee, &c. | S. J. Russell, Esq.           | Prom. Maples and Co.      |
| A. Dobie              | Thomson              | Webb, Bart.                   | Dt. Chauntler and W.      |
| Same                  | Miller               | Same                          | Dt. Same                  |
| Strutt                | Parratt              | Cornfoot                      | Prom. Elmslie and Co.     |
| G. Finch              | Finch                | Miller                        | Repl. Frankham and D.     |
| Wire and Child        | Doe d. Stevens       | Larking                       | Eject. Carlton and H.     |
| Sidney and Sidney     | Sanders              | Andrade                       | Ca. Sidney Smith          |
| Clowes, Wedlake & Co. | Roper and another    | Keeper                        | Dt. Hindman and IL        |
| H. E. Brown           | Palmer               | Bayliss                       | Prom. Cleobury            |
| A. F. Chamberlayne    | Chamberlayne         | West                          | Prom. Chilcote            |
| J. P. Bassett         | Kendall              | Watkins                       | Dt. Waller                |
| W. Wilkinson          | Ahitbol              | Moore and others              | Dt. G. Brace              |
| Pearson               | Ellicombe            | S. J. Ashpitel                | Prom. Rush                |
| T. Parker             | Ovenston             | Archbold                      | Dt. J. Lewis              |
| R. C. Barton          | Doe d. Gaines        | Roash                         | Eject. Wade and P.        |
| Manning               | Duncan               | Ward                          | Dt. Dixon and Co.         |
| Gell and H.           | Edwards              | S. J. De Burgh                | Prom. Keane               |
| J. Thistlewood        | Waters               | Glasse                        | Ca. Cocksaedge            |
| S. Bicknell           | Bicknell             | Challoner                     | Ca. Webb                  |
| Kempson, G. & C.      | Denns and others     | Haigh                         | Prom. Holt and A.         |
| J. Williams           | Jackson              | Reece                         | Prom. R. Sargent          |
| J. J. Spiller         | Rogers and another   | Teversham                     | Dt. Whalley               |
| Edwards and Co.       | Turner               | Whalley                       | Baxters                   |
| A. Warrand            | Swaby                | Hiatt                         | Dt. R. B. Chambers        |
| Same                  | Butcher              | Lamb                          | Dt. E. Elkins             |
| S. M. Cooper          | Austin               | Morrison                      | Prom. Collinridge and Co. |
| Bicknell and B.       | Wellings             | Firkins                       | Prom. J. Billings         |
| Armstrong and F.      | Becher               | Anderson                      | Tres. Lofty, P. and Son   |
| Capes and S.          | Anderson             | Tuhey                         | Dt. Kempster              |
| T. Hill               | Broadbridge          | Harrison                      | Prom. James and Son       |
| W. Smith              | Goswick              | Monro                         | Prom. C. Appleyard.       |

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 13, 1847.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

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## THE COMMERCIAL FAILURES AND THE COURT OF BANKRUPTCY.

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THE merchant princes who have bowed their heads in the passing storm, have still, without a single exception, contrived to avoid the Court of Bankruptcy: it is only the small deer who have been driven to take shelter within its walls. Some sharp-sighted persons, however, suppose that the exemption generously extended to those whose debts exceed 100,000*l.*—“say a hundred thousand”—is only to be considered in the nature of a temporary privilege, and that insolvency will ultimately be found—like death—to level all distinctions, and introduce the messenger of the Court of Bankruptcy into the palace of the great merchant as well as into the parlour of the small trader. It is not that the court has improved in general estimation, or that the deference for wealth has abated, or that any disposition exists amongst the commercial community to confound the unsuccessful speculator in shiploads of cotton and plantations of sugar, with the miserable shopkeeper who finds himself unable to pay for the last “lot of goods” he ordered. The disinclination to resort to the court continues, and the distinction between the heads of great houses and petty traders is as fully appreciated in the city as it has been at any former period. It begins to be more than suspected, however, that the great failures, in many cases, partake of the nature of great *swindles*. It turns out that men who rode every day to the corner of Princes’ Street in their own carriages, with two footmen behind, had they adopted a style of travelling proportioned to their

capital, would scarcely have been justified at any time in indulging in the luxury of a full-priced omnibus. It turns out that, in fact, they never possessed any actual capital, but traded from first to last on credit. Discounts supplied the *pabulum* which enabled them to make such magnificent appearances, and undertake such gigantic speculations, and when the supply was suddenly withdrawn, down they fell from sheer inanition. It is now clearly perceived that the statements put forward, in the first instance, on behalf of the defaulting houses, derived their imposing character in a great degree, if not altogether, from the ingenuity of the Accountants, a class rapidly assuming that position in society which must entitle them to rank with our best novelists. The figures, of course, were in general correct, but the inferences suggested were most delusive. The practical result is, that amongst the colossal establishments which have fallen within the last three months, there is hardly one in twenty from which the creditors can reasonably calculate upon a dividend of ten shillings in the pound.

The knowledge and appreciation of these circumstances is working a great revolution in the sentiments of the public, and especially of the sufferers by the late failures. The sympathy felt in the earlier stages for those, who used to hold their heads so high on the exchange—“to come so smug upon the mart”—is fast oozing away, and giving place to an impression that a state of things so unsound and discreditable ought to be probed to the bottom, and exposed; and that this can only be effected by creditors availing themselves of the machinery,

defective as it is, which the Court of Bankruptcy affords. But here the law conveniently interposes to assist the debtor who is averse to having his affairs administered under the Bankrupt Laws, and raises an obstacle which the creditor has some difficulty in surmounting. Any creditor whose debt amounts to 50*l.*, or upwards, may cause a fiat in bankruptcy to be sued out, but this proceeding is a nullity, unless the creditor is prepared to prove,—1st, his own debt; 2ndly, that the debtor is a trader within the meaning of the Bankrupt Laws; and lastly, that he has committed an act of bankruptcy. Now, the trading and debt are in general easy of proof, but when the debtor is disinclined to afford the opportunity, it is frequently impossible to establish an act of bankruptcy. Although the debtor stands in his counting-house and tells all his creditors that he is unable or unwilling to satisfy their demands, or addresses to them a circular, in what may now be called the common form, regretting to state that he is compelled to suspend payment, &c., there is in the eye of the law no act of bankruptcy. The course of procedure required to establish an involuntary act of bankruptcy against a trader, under the statutes 1 & 2 Vict. c. 110, s. 8, and 5 & 6 Vict. c. 122, s. 11, is also dilatory and uncertain. The debtor, therefore, who is not liable to be taken in execution, may avoid an act of bankruptcy, and without any infraction of the law, hold his creditors—great and small—at arm's length for a considerable period, unless they fall into his terms. The case here put is not conjectural. Nearly three weeks ago, a fiat issued against a firm carrying on business in the neighbourhood of Charing Cross, whose suspension created no small consternation, and whose estate, we understand, is expected to realize a dividend of between 1*s.* 6*d.* and 2*s.* 6*d.* in the pound. One of the partners in this firm resided out of town. It was impossible to show that he had absented himself from his creditors, or committed any act of bankruptcy. The commissioner refused to adjudge the party a bankrupt on the evidence adduced, and the fiat could not be prosecuted. In another case, also a West-end firm, where the difficulty of proving an act of bankruptcy was anticipated, a creditor desirous of issuing a fiat, proceeded by filing an affidavit of debt under the 1 & 2 Vict. c. 110; but was unexpectedly met by a notice, that the partners in the defaulting firm, who were avowedly *then* unable to meet their engagements, were nevertheless pre-

pared to enter into a bond, with two sufficient sureties, to pay such sum as should be recovered in any action, or to render themselves to prison, pursuant to the provisions of the statute. By this means the object the creditor had in view was frustrated, and bankruptcy for the present averted.

In all these cases the evil day is only postponed. Those engaged in various capacities in winding up the affairs of the insolvent concerns, may indeed have reason to congratulate themselves. If there be any assets remaining, the arrangement cannot fail to be profitable to *them*. Whether this new system of administering bankrupt estates under the superintendence of a committee, and dispensing with the assistance and protection afforded by the Bankrupt Laws, will ultimately prove advantageous to the bankrupts themselves, or to the general body of creditors—to those who have no tricks of trade they desire to conceal, and no exposure to apprehend—is, to say the least, doubtful.

#### EXEMPTION OF MEMBERS OF PARLIAMENT FROM ARREST.

THE Court of Exchequer has evinced a remarkable disinclination to entertain the question, how far a member of parliament is privileged from arrest on civil process. Our readers may recollect, that in a case of *Goudy v. Duncombe, M. P.*, Mr. Justice Williams, during the long vacation, decided, that the defendant should be discharged from custody, on the ground that he was privileged as a member of parliament. An attempt was made on Saturday<sup>a</sup> last to review that decision, by moving for a rule to rescind the learned judge's order. The court, however, suggested, that it was waste of time to discuss the question now, as the defendant, even if he had been properly arrested in the first instance, would clearly be entitled to his discharge upon the meeting of parliament, and the learned counsel who made the application was advised to postpone it, and significantly informed, that he might renew it on the 19th instant, parliament having been summoned to meet on the 18th.

Now, we are well aware that the courts of justice have uniformly discountenanced speculative attempts to obtain their opinion upon questions of law not necessarily arising in the progress of a cause. Indeed,

<sup>a</sup> The motion was renewed on Thursday last, and heard, and the court took time to consider whether the rule should be granted.

the discussion of abstract questions founded upon a fictitious state of circumstances would be a grievous misapplication of public time. But, it may be doubted whether the question unsuccessfully attempted to be brought under the consideration of the court in *Goudy v. Duncombe*, was fairly open to any such objection. The question presents itself in this form :—The plaintiff in the action having obtained the judgment of a competent tribunal—of the Court of Exchequer itself—that the defendant was justly indebted to her in a specified sum, sues out a writ of execution addressed to the sheriff of Yorkshire, who arrests the defendant, but is directed shortly after by the order of a judge to discharge his prisoner, on the ground that he was a member of the House of Commons, and by reason of that distinction, protected from a species of execution available against the bulk of the Queen's subjects. The order was made by a single judge, sitting in a moderately sized room behind Chancery Lane, with probably one hundred impatient suitors standing either at his elbow or outside the door, without much time for consideration, and no opportunity for consultation. The judge's order was obviously of the utmost importance, both to the plaintiff and the defendant. It is quite possible—not to say probable—that if no such order had been made, her judgment would ere this have been satisfied, or, in the absence of such satisfaction, the defendant would have remained in gaol until discharged by due course of law. The court whose judgment has been rendered unavailing by the judge's order made under such circumstances, is respectfully asked, whether that order is in conformity with the law? and it is said the answer to that question is immaterial, because in twelve days hence the defendant would certainly be entitled to his discharge from custody. The alleged reason for the indisposition manifested to enter upon the matter is scarcely conclusive. The possible event suggested by the learned counsel for the plaintiff,—that of the defendant ceasing to be a member of parliament before the 18th,—is not the only event that can be conceived in which a decision of the court, rescinding the order of Justice Williams, would operate beneficially to the plaintiff. The present parliament, like other sublunary things, will come to an end sooner or later. How long is the exemption of a member of this parliament to continue after its dissolution? or, in the event of his re-election, when does he begin to wear the mantle of

protection? There are other plaintiffs and defendants interested in the determination of these questions, besides Mrs. Goudy and Mr. Duncombe.

It will be readily admitted, that it is not a light occasion which would justify one of the courts of law in entering upon a discussion that, by possibility, might terminate in a collision between the courts and one of the three estates of the realm. When such an occasion arises, however, it should be treated with a gravity proportioned to its importance. The newspapers state, we hope not correctly, that the application in *Goudy v. Duncombe*, and the manner in which it was treated, created much merriment in court. It need not be wondered at, if the plaintiff, Mrs. Goudy, and others who may be similarly circumstanced, find it extremely difficult to comprehend in what the jest consists.

#### ATTORNEY'S LIEN ON PAPERS.

AN unsuccessful attempt was made, during the last Term, in a case recently reported,\* to disturb the principle on which an attorney's lien on papers rests, under the following circumstances :—Mr. Bromehead was employed as an attorney by a person named Dewsnap, to conduct the proceedings in a case of *The Queen v. Alger*, and in other matters. In the month of January, in the present year, Dewsnap changed his attorney, leaving a balance due to Mr. Bromehead of 99*l.* 10*s.* 6*d.*, to recover which an action was subsequently brought. Pending this action, Dewsnap, through his new attorney, took out a summons, returnable before a judge at chambers, calling upon his former attorney to show cause why, upon payment of the sum claimed, under protest and subject to future taxation, he should not deliver up the papers held by him as the attorney of Dewsnap. Mr. Justice Erle, before whom this summons was heard, refused to make any order upon it. A rule was subsequently obtained in the Bail Court, calling upon Mr. Bromehead to show cause why, upon payment of the sum claimed into court, or into the hands of the Master, subject to the verdict of a jury, the papers in his hands should not be delivered up. The affidavit upon which the rule was moved stated, that the papers were necessary in the action brought by Bromehead against Dewsnap; that Bromehead's claim was

\* *In re Bromehead*, 16 Law Jour. 355, Q. B.  
c 2



barred by the Statute of Limitations; and that an undertaking would be given by Dewsnap to produce the papers at the trial, if required.

Mr. Justice *Wightman*, before whom the rule was argued, pointedly inquired, if there was any authority for such an application? It was quite clear, upon the authority of *Higgins v. Scot*,<sup>b</sup> that the Statute of Limitations did not affect an attorney's lien, for the statute applied to the remedy only, not the debt.

The counsel for the applicant insisted, that Mr. Bromehead could not be prejudiced by delivering up the papers, as the amount of his lien would be paid into the hands of the Master, and it was suggested, that as an officer of the court, the court might properly interfere, and require him to deliver up papers which were material and necessary for the trial of a cause actually depending.

Justice *Wightman* thought it would be against all principle to deprive an attorney of his lien, and substitute something of a different nature from that which he possessed. An attorney, under such circumstances, did not stand on a different footing from other parties. As the application was contrary to principle, and unsupported by authority, the rule was discharged with costs.

#### THE LORD CHANCELLOR'S ORDER ON THE RESIGNATION OF ONE OF THE TAXING MASTERS.

Friday the 5th day of November, in the eleventh year of the reign of her Majesty Queen Victoria, 1847.

WHEREAS George Gatty, Esq., one of the Taxing Masters of the High Court of Chancery, did on the 2nd day of November instant, resign his office as one of the said Taxing Masters; and whereas it is expedient that provision should be made for the due dispatch of such causes and matters as stand referred to him; his Lordship doth order that all causes and matters which stand referred to the said George Gatty be transferred to Henry Ramsay Baines, Robert Bayly Follett, Philip Martineau, Richard Mills, and John Wainwright, some or one of them, to be taken by them respectively in such order as the said Richard Mills shall direct; and his Lordship doth further order that the said Taxing Masters to whom such causes

and matters shall respectively be assigned do proceed and act therein as the said George Gatty was to have done, and for that purpose all books, papers, deeds, writings and accounts that concern the causes and other matters which formerly stood referred to the said George Gatty, shall be transferred to the said Taxing Masters respectively to whom the said causes and matters shall be so assigned as aforesaid; and this order is to be drawn up and entered by the registrar of the said court. B. 1847, fol. 2, R. O. W.

CECIL MONRO, *Regr.*

#### NOTICES OF NEW BOOKS.

*Manual of the Law of Scotland.* By JOHN HILL BURTON, Advocate, Author of a Treatise on the Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland. In two volumes. Second Edition, enlarged. Edinburgh: Oliver & Boyd. London: Simpkin, Marshall, & Co. 1847. Pp. 437, 506.

THIS work is much esteemed amongst our northern brethren, and deserves to be introduced to the notice of the English student and practitioner. It contains a concise but clear view of the law of Scotland, ably written and well arranged. In these days, when the lawyer is incited to pursue his studies on a more comprehensive and scientific plan than heretofore, works like those of Mr. Burton are particularly acceptable.

Our readers are acquainted with many parts of the mercantile law of Scotland, which have been ably stated in the *Legal Observer* by one of its contributors well versed in that branch of Jurisprudence. The present author has divided his treatise into two volumes, the one on public, the other on private law. He has shown an extensive knowledge of his subject, and displayed great labour and research and power of condensation in the execution of his work. The volume on public law comprehends that department of the law in which the public at large, or individuals as members of the body politic are interested.

"It relates to the public institutions, so far as the citizen is called on to act in reference to them within Scotland, from parliament and the superior courts of law down to public companies and friendly societies; to the various regulations by which the legislature has from time to time, on the grounds of public expediency, or from other motives, made regulations restricting trades and occupations, or dictating

<sup>b</sup> 2 Barn. & Ad. 413.

the manner in which they are to be conducted, —a branch embracing within one common principle the markedly separate provisions of the factory regulations on the one hand, and the game laws on the other. The poor law demanded a place as an important feature in local taxation, and if it had not been thus assigned to the fiscal department of the work, would, as the machinery for protecting the impoverished part of the population from destitution, have demanded attention in the part dedicated to the law of police, in which the several precautionary and remedial measures for protecting the citizen from calamities and inconveniences caused by accident or design are set forth. The public laws relating to the means of conveyance, both by land and water, demanded a special place, and the criminal code had undoubted claims to be embraced within the scheme of the Volume.

"The powers and duties of magistrates and officers of the law—a matter more or less connected with every department of the work—required to be kept continually in view. In the absence of any new edition of Mr. Tait's excellent '*Justice of the Peace*,' or of any other late work calculated to continue it down to the present day by embodying a notice of the multitudinous statutes by which new functions have within these past few years been conferred on the unpaid magistracy, the author has had in view the object of making this volume supply the place, in so far as its limits may permit, of the sort of digest which is generally termed a '*Justice of Peace*.'

"In a work within so small a compass the practising magistrate must not expect to find anything to supersede the statutes, by the letter of which he is bound, and the express terms of which he ought to consult on every occasion on which he enforces them. Burn's *Justice of Peace*, which professes to embody in full all the clauses of the acts giving power to justices of peace in England, occupies about seven thousand very closely printed pages. Although a smaller bulk would contain all the statutes with which justices of peace in Scotland have to deal, a work embodying them verbatim, and supplying the place of the statutes themselves, would be many times the size of this small volume. It is almost unnecessary, however, to say, that the justice of peace, like every other judge, must find use in digests and commentaries. They place before him the general result of the complex and apparently conflicting clauses of various acts,—show the relation of different parts to each other,—condense the meaning of long involved enactments into brief propositions,—illustrate the operation of the act by decisions,—and probably the most important function of all, afford a means of reference to the statute law on particular heads, and indicate the acts which have been from time to time passed for the purpose of repealing, altering, amending, explaining, or consolidating previous enactments."

The contents of this volume on Public Law are thus arranged:—

1. Courts of Law.
2. The Members of the Legislature.
3. Public Civil Institutions.
4. Institutions connected with Religion and the State.
5. Revenue and Taxation.
6. Regulations and Restrictions of Trades and Occupations.
7. Regulations as to Transit.
8. Public Police.
9. Criminal Law.

The volume on the Law of Private Rights and Obligations is thus introduced:—

It embraces those portions of the original edition of '*The Manual of the Law of Scotland*' which relate to the private rights and obligations of individuals, whether arising from contract or from the operation of the law. Some additions have been made, embracing departments which had been either overlooked or but partially attended to in the first edition; and an effort has been made, by noticing the substance of recent legislation and the principles of late decisions, to carry the law down to the present day. The general scope of the volume relates to property and its tenures, the domestic relations, succession, contracts, and transmissions; the remedies for the fulfilment of obligations, the law of debtor and creditor, and the commercial code in general.

"In some departments of the book the Author has made occasional references to his more elaborate and detailed work on the Law of Bankruptcy in Scotland, which the reader will understand as merely a brief method of citing the authorities which may be found at length in that book, in support of the principles embodied in the abridged compilation.

The Author has prefixed to the volume a notice of the History of the Law of Scotland, the sources whence it is derived, and the literature in which it may be studied, calculated, he hopes, to be useful to the student in the absence of any more full and authoritative work on this important subject."

This portion of the work is thus subdivided:—

1. Persons in their Relations to each other.
2. The various classes of Property, and their respective value.
3. Succession.
4. Obligations and Contracts.
5. The Contract of Sale.
6. Contracts involving Copartnership.
7. Contract of Insurance.
8. Contracts of Suretyship.
9. Contracts of Trust and Service.
10. The Contract of Letting and Hiring of Property.
11. Bills of Exchange and other Negotiable Obligations.
12. Securities.
13. Insolvency and Bankruptcy.
14. Legal Remedies.

## TOWN POLICE CLAUSES ACT. .\*

10 &amp; 11 VICT. c. 89.

This is an Act for consolidating in one Act certain Provisions usually contained in Acts for regulating the Police of Towns. It received the royal assent on the 22nd of July last.

It recites that it is expedient to comprise in one act sundry provisions usually contained in acts of parliament for regulating the police of towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such towns or districts, as for ensuring greater uniformity in the provisions themselves: Be it enacted, That this act shall extend only to such towns or districts in England or Ireland as shall be comprised in any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith; and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the town or district which shall be comprised in such act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

2. Interpretations of words in this act.

3. Interpretations in this and the special act.

4. Short title of the act: "The Town Police Clauses Act, 1847."

5. Portions of this act may be incorporated with other acts.

*Constables.*

6. Appointment of constables. 2 & 3 Vict. c. 93. 3 & 4 Vict. c. 88.

7. Power to apply for additional constables in case of need.

8. Constables to be sworn in.

9. Expenses of prosecutions, and allowances to constables.

10. Constables not to resign without leave or notice.

11. Constables dismissed to deliver up accoutrements.

12. Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.

13. Power to provide offices, watchhouses, &c.

14. Duties of constables.

15. Power of police constables and persons aggrieved to apprehend offenders punishable on indictment or as a misdemeanor.

16. Penalty for neglect of duty.

17. Power of constables to take recognizances.

18. Form of the recognizances.

19. Recognizances to be registered and returned to the justice.

20. Penalties on persons assaulting constables.

*Obstructions and Nuisances.*

21. Power to prevent obstructions in the streets during public processions, &c.

22. Power to regulate the route of persons driving stage carriages, &c., during divine service.

23. Proprietors of stage carriages deviating from route by order free from penalty.

24. Power to impound stray cattle.

25. Power to sell stray cattle for penalty and expenses.

26. Persons guilty of pound-breach to be committed for three months.

27. Power to provide a pound.

28. Penalty on persons committing any of the following offences:—

Every person who exposes for show, hire, or sale (except in a market or market-place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan

therwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state

Every person, who after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, car, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle :

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages; and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare :

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandize, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard, on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandize, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution :

Every person who wilfully and indecently exposes his person :

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language :

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework :

Every person who wilfully and wantonly dis-

turbs any inhabitant, by pulling, or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials, (except building materials so inclosed as to prevent mischief to passengers) :

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, bricks, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street : Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable material to prevent the freezing of water in pipes, or in case of sickness to prevent noise. If the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

29. Penalty on drunken persons, &c., guilty of riotous or indecent behaviour.

*Fires.*

30. Penalty for setting chimneys wilfully on fire.

31. Penalty for accidentally allowing chimneys to catch fire.

32. Fire engines and firemen may be provided by the Commissioners.

33. Fire police permitted to go beyond the limits of the act on defraying the expense.

*Places of public resort.*

34. Penalty on victuallers harbouring constables while on duty.

35. Penalty on coffee-shop keepers harbouring disorderly persons.

36. Penalty on persons keeping places for bear-baiting, cock-fighting, &c.

*Hackney carriages.*

37. Hackney carriages to be licenced.

38. Hackney carriages defined as standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid.

39. Fee to be paid for licence.

40. Persons applying for licence to sign a requisition for the same.

41. What shall be specified in the licences.

42. Licences to be registered.

43. Licence to be in force for one year only.

44. Notice to be given by proprietors of hackney carriages of any change of abode,

45. Penalty for plying for hire without a licence.

46. Drivers not to act without first obtaining a licence.

47. Penalty on drivers acting without licence.

48. Proprietor to retain licence of drivers when in his employ, and to produce the same when summoned. Justices may endorse convictions upon licences. Penalty on proprietors for neglect.

49. Proprietors to return licence to drivers when quitting his service if they behave well, if otherwise proprietors to summon them. Compensation in case of licence being improperly withheld.

50. Licences to be suspended or revoked for misconduct.

51. Number of persons to be carried in a hackney carriage to be painted thereon.

52. Penalty for neglect or for refusal to carry the prescribed number.

53. Penalty on driver for refusing to drive.

54. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special act, or any bye-law made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.<sup>a</sup>

55. Agreement to pay more than the legal

fare not to be binding, and sum paid beyond the proper fare may be recovered back.

56. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty shillings, if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special act, or any bye-law made in pursuance thereof.<sup>b</sup>

57. Deposit to be made for carriages waiting. Penalty on the driver refusing to wait, or to account for the deposit.

58. Overcharge by hackney coachmen, &c. to be included in conviction, and returned to aggrieved party.

59. Penalty for permitting persons to ride without consent of the hirer.

60. No person to act as driver of any carriage without the consent of the proprietor.

61. Penalty on drivers misbehaving.

62. Penalty for leaving carriages unattended at places of public resort.

63. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.<sup>c</sup>

64. Improperly standing with carriage; refusing to give way to, or obstructing any other driver; or depriving him of his fare. Penalty 20s.

65. Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

66. Penalty for refusing to pay the fare.

67. Penalty for damaging carriage.

68. Commissioners may make bye-laws for regulating hackney carriages.

*Bathing.*

69. Regulation of bathing machines.

70. Regulations as to rates.

71. Bye-laws.

72. Tender of amends.

*Recovery of damages and penalties.*

73. Recovery of damages and penalties.

74. In Ireland part of penalties to be paid to guardians of unions.

75. All things required to be done by two justices may, in certain cases, be done by one.

<sup>b</sup> This also is a material clause.

<sup>c</sup> This clause effects an alteration in the law.

76. Persons giving false evidence liable to penalties of perjury.

*Access to special act.*

77. Copies of special act to be kept and deposited and allowed to be inspected. 7 W. 4, & 1 Vict. c. 83.

78. Penalty on failing to keep or deposit such copies.

## LEGAL EDUCATION REPORT.

### ADVOCATES, WRITERS TO THE SIGNET, AND SOLICITORS IN SCOTLAND.

HAVING in the last volume extracted from the Report of the Committee the effect of their view of the evidence regarding the existing state of Legal Education in England and Ireland, and also in Germany,\* we proceed now to their statements relating to Scotland.

"The Faculty of Advocates represent the legal body in Scotland, and only take cognizance of the legal instruction given in the University of Edinburgh by the professors of civil law and of Scotch law in that university. This has necessarily had an effect upon the legal education of the other universities. There is, in fact, no bar except in Edinburgh, and legal education is very imperfect in all except in Glasgow. In Glasgow it is made principally subservient to the wants of the Society of Procurators, who correspond to the English and Irish solicitors. The general course of study being in reference to the peculiar character of Scotch law, and reposing, as in a great degree it does, upon the civil code, embraces as its chief object the civil law; the Scotch forming, as it were, the practical application. This course forms, in some degree, the faculty of law at each of the universities. It is carried out by means of lectures, and followed by periodical and final examinations. Where these regulations are zealously conducted in practice, the education is, on the whole, as far as it goes, efficient; but even at Edinburgh, to judge from the evidence of Lord Brougham, both lectures and examination have, in many particulars, lost much of their original energy. 'I may safely say,' says the noble lord, 'that this examination is next to nugatory. It is a little better than the English form, but it is not much better for grounding the student in the knowledge of his profession.' And this conclusion seems amply borne out by his previous statement. After referring to the neglect of legal education in the inns of court in England, he continues: 'In Scotland the case is not quite the same, but it is tending towards the same. Formerly two examinations must be gone through by the candidate before he could be what is called passed or admitted to advocate, which is tantamount to our call to the bar. One was in civil law, and the other in Scotch law; and at all times, and up to

this day, the student is required to have a course of lectures on civil law, upon the institutes, and another course of lectures upon the pandects, and also a third course upon Scotch law, by the Scotch Law Professor, who is appointed by the Faculty of Advocates, which is the legal body in Scotland. The attendance upon those classes is the only thing that now remains likely to be very effectual, as imposing the duty of being educated upon those who are about to be made advocates. The certificate of the professor is required that the party has attended the three classes, but there is no examination whatever of the pupil by the professor in the Scotch law class, though there is the examination by the

classes. Nevertheless, these examinations have exceedingly little of reality or use in them. When I attended the class, it was perfectly well known that the answer to each question could be known beforehand; for if the professor began his question (the examination being in Latin) with "An," the answer was "Non," in the negative, whatever the question was. If he began his question in "Nonne," the answer was "Etiam," whatever the question was. That I can speak to, from my own experience, to have been the constant well-known course of examination at the late Professor Dick's class; whether the examinations have continued since or not, I am not able, of my own knowledge, to speak. I never remember an examination in the Scotch Law class. The only other test of proficiency is by the examination which the candidate for the bar undergoes before seven examiners in the Scotch law, and nine examiners in the civil law, belonging to the Faculty of Advocates. As each examiner takes a title of the institutes in one case, and of the pandects in the other, to examine the pupil out of, if each examiner were to make the candidate undergo a real examination upon the title, the result would be, that he would be examined strictly upon seven titles of the Scotch law, and eighteen titles of the civil law, which if the party could answer upon, might be taken to be an exceedingly rigorous test of the proficiency in those sciences. But, unfortunately, whatever may have been the original of that practice, in fact, it has become not much better than nugatory or formal; for it is the invariable custom for the candidate to wait upon those examiners one after another, and each receives him civilly, and upon his going away, tells him he may look over such and such a title; the consequence of which is, that he knows exactly upon what title he is to be examined, and therefore, although it is better perhaps than nothing, inasmuch as it requires him to have made himself master of these 25 titles; yet it is equally clear, that as he can make himself master of those for the particular purpose of the moment, he, in all probability, has entirely forgotten every title of such title a week after, unless he happens, independently of this examination and of these exigencies, to have made himself master of the subject.

\* See 34 L. O. 165, 214, 263, 399, 488, 501.

Therefore, I may safely say this examination is next to nugatory.'

Such was the state of legal education at Edinburgh in Lord Brougham's time. Professor Maconochie, the present Professor of Civil Law in the University of Glasgow, gives a somewhat more favourable view of the state of legal instruction in that university at present.

"Now, as then, the education for both professional and unprofessional men is inadequate and unsatisfactory, but there seems at least a more distinct recognition of its value and necessity. There is no course of legal study intended for general students in any of the universities of Scotland; in no portion of the course in the Faculty of Arts is there even an elementary course of law introduced; no time is given for, it; nor is it considered as necessary or auxiliary to the obtaining a degree. The Faculty of Law, wherever it exists in those institutions, is totally distinct from the usual curriculum of study; so that a young man may take his degree of Master of Arts, and have the pretension of being educated in all branches of literature, and yet be utterly ignorant of the first principles of the laws and constitution of his own country (the case of a great majority of the students in the Scotch universities), and *à fortiori* of those of other nations. An endeavour was made in some degree to supply this want in Edinburgh and Glasgow. In the former there was a chair "of the Law of Nature and Nations," which was occupied by the first Lord Meadowbank, but this again formed no part of the usual curriculum of the university; it gradually fell into disuse, and is now completely abandoned. In the latter, Professor Miller delivered lectures upon "General Law." At that time, men's minds were particularly turned to the discussions then going on in Europe, regarding the principles of government, (the French revolution was in progress, political economy and the knowledge of the theory of government only in its infancy,) and all these circumstances excited more attention to such a course than it would be now possible to obtain. It is also observable that at that period, from this or other causes, the attendance of Englishmen, and the sons of gentlemen from the country, in Glasgow, was greater than it is at present. 'In Scotland,' says Lord Campbell, 'almost all the gentry used to attend lectures upon the civil law, municipal law, and were passed as advocates, that is, were called to the bar, and certainly derived great advantages from that.' The present course of instruction appears to be considered as exclusively destined for the profession, and those portions only are attended to, which are considered of immediate, practical, professional use. Even this provision still continues scanty enough. There is no preliminary examination either for advocate or writer of the signet, or procurator, which might go to test the general education, acquirements, or habits of the candidate previous

to his being admitted to the study of the profession. This is a very serious omission, and felt injuriously in many instances by the candidates during the whole course not only of their legal studies, but of their after professional life. In Edinburgh the Faculty of Law in the university comprises three chairs, filled by three professors, two of them members of the bar, and one of them a writer of the signet. The first is Professor of Scotch Law, the second is Professor of Civil Law; the third is Professor of Conveyancing; but it is to be observed that these three gentlemen are gentlemen exercising their professional avocations, and attending the courts of law during the day. The consequence is, that the duties which they perform in Edinburgh may be performed in Glasgow by one individual who can devote his whole time to instruction. In Edinburgh the course of each professor does not much exceed four months, and consists of only four lectures a week and one examination. The examination required is in civil law the first year, and in the following year in Scotch law, somewhat more strict than it appears to have been in Lord Brougham's time; its duration for each candidate is on an average half an hour, and it is of sufficient rigour to let the examiners know they are not admitting an absolute ignoramus into their profession, but quite inadequate to test any complete knowledge of the candidate's profession, and utterly inadequate to test the fact of his having had previously a gentleman's education."

With regard to the writers of the signet, (the body of practitioners next to the bar,) they have a pretty rigorous examination, and they require—(what it is remarkable the body of advocates do not)—a certificate of attendance upon the civil law class.

"Professor Maconochie is the sole member of the Faculty of Laws in the Glasgow University, and embraces all the departments—the teaching of the civil law, of Scotch law, and of conveyancing. His predecessor had only a commission as professor of the civil law; but on a representation, it appears, of the procurators of Glasgow, that is, of the members of the legal profession of that town, he was asked by the Lord Advocate on the part of the crown to deliver lectures upon Scotch law. Professor Maconochie agreed to do so upon receiving a royal warrant to that effect, and thus he became teacher of civil law and Scotch law in that university. He is bound by the statutes to deliver five lectures upon civil law per week during the session, provided not less than five students offer themselves to attend that course. Notwithstanding all his anxiety to promote its study, his efforts to collect a regularly attended civil law class in Glasgow have been hitherto unavailing. This is owing to the peculiar position of those who would be likely to form his audience. The law students of Glasgow are young men either exercising the functions of clerks in the procurators' offices, or they are the 'unior members of that profession



actually engaged in professional avocations yielding them pecuniary advantages; their time therefore is extremely limited: the only hour at which they can attend is from nine to ten o'clock, after their own breakfasts, and preceding the opening of the offices for legal business. Add to this, that the only certificate of attendance required by the Society of Procurators for admission to the profession is that of a single course of the Scotch law lectures. The Scotch law lectures in return, as may naturally be supposed, are well attended, more numerous indeed than at any previous period in the university. The present average of the class is somewhat about thirty, composed partly of students of the first year, and partly of students who attend a second course. The system of instruction combines lectures and examinations. A civil law course (from the impossibility of obtaining a class) being out of the question, the lectures are confined to the Scotch law; but the professor, in order to obviate this defect, has, as he states, endeavoured along with the practice of the law to carry on the history of the law, and to trace it back to the principles of the Roman law, and thus to compel the students who attend his Scotch law class to carry away with them as much of the principles of jurisprudence as his limited time will admit of. The course pursued is nearly as follows: After delivering, somewhat on the plan of the German universities, three or four introductory lectures, which contain a sort of synoptical view of the business of the session, and which, from enabling the student engaged in professional avocations to economise his time, and to study so as to prepare himself for the lectures, which he is thus enabled to anticipate, are found to be of great advantage, the professor proceeds to embrace the whole subjects of the municipal law of Scotland, illustrated, as already stated, by a recurrence to the principles of the Roman law and of international law. For this purpose he enlarges one year upon particular subjects; these he condenses in the following year; so that students attending two years, or if they please three years, may get an enlarged view of the whole municipal law of Scotland. It is to be observed, however, that this arrangement, under the particular circumstances of the case, has its inconveniences, as in one session a subject is more fully carried out than in another; in one session, for instance, mercantile law, in another feudal; and as attendance for one session only is required, as already stated, in order to qualify for admission to the profession, it may so happen that a student may obtain a certificate, and so pass, with a competent knowledge of a particular branch or branches of law, and yet be completely ignorant of all others. It is also, as might under present arrangements be expected, usual to meet with attendance on such lectures only as are immediately conducive to pecuniary advantage. Professor Maconochie gives a strong illustration of this fact: 'I always find that when my lectures are to be upon the history or principles of our law, the attendance of

students is comparatively small; but when I lecture upon the mercantile parts of our system of jurisprudence, and more especially when, last winter, I delivered lectures upon the law relative to joint-stock companies, my classroom was crowded.' These deficiencies he has, as far as he could, attempted to remedy. He has prolonged the term, and induced the students to attend for a fortnight or three weeks beyond the period of the close of the ordinary session of the college, and has occasionally obtained their attendance during an extra hour in the week, but with great difficulty, for the reasons already specified. The class, too, from which they come, and the objects they have in view, naturally enough account for this. There are one or two gentlemen who attend, sons of citizens of Glasgow, whose object it is afterwards to go to Edinburgh, and become members of the Faculty of Advocates; but these are exceptions."

The mass of the students are those who intend to become practitioners either in Glasgow, Paisley, Ayr, the neighbouring towns in the west, and are destined to the profession of procurator, equivalent nearly to the English solicitor, but who have the privilege of practising in the local courts of the resident sheriffs.

To give greater efficiency to his instruction, Professor Maconochie has instituted class examinations upon the subjects of the preceding lectures. These examinations are held generally twice a week, sometimes oftener, sometimes seldomer, according to the subject. From the age of some of the students, it is not to be expected that all the gentlemen attending the class will submit to the exposure of a public examination; he is therefore obliged to put it to the option of the students themselves whether they will stand upon his examination-list or not; he has generally found, however, that the majority, at least two-thirds of the students, have agreed to that ordeal, encouraged no doubt by this, that he gives no certificate of ability, and no prize to a student who does not stand upon such list. In addition to the above mode of instruction, he has occasionally given questions in law, to be answered in writing, special cases for the opinions of the students, desiring, of course, reference to be had to well-known cases. This arrangement is assisted by the discussions of the 'Law Debating Society,' which he instituted himself, and in which questions are argued by the students, which he himself had previously pointed out and called their attention to. The utility of such a system cannot be too highly rated, both in reference to the teacher and to the taught. Professor Maconochie gives, from his own experience, a very striking testimony in its favour. It is remarkable that no final examination is required (the certificate of attendance already noticed is held to be sufficient); and still more so, that a profession, which of all others one would suppose was most likely to be guided by uniformity of prin-



ciple and practice, should adopt different tests for qualification in different localities. In Edinburgh, as already noticed, the writers of the signet require a certificate of attendance upon the civil law, for admission into their body, but do not examine upon it; whilst, on the other side, they examine upon Scotch law and conveyancing. In Glasgow they require no attendance on civil law lectures, and do not examine on Scotch law, though they require attendance. In Aberdeen, neither is very strictly insisted on; its single chair of law owes its institution to the practitioners or attorneys, who elect one of their own body to fill it; and in St. Andrew's, there is no chair of law at all. Combined with this very thrifty provision for legal instruction, we must also observe, the opportunities afforded for individual industry and study are fewer, and the period required for preparation much shorter, than in England.

"In Scotland," says Lord Brougham, "there is no substitute for legal education, such as we have in England, by the practice of attending a conveyancer and equity draftsman, or a special pleader. Some advocates before being admitted, have attended a conveyancer; that is to say, a writer to the signet, who generally acts also as an agent, that is to say a solicitor in causes. Such obtain a very considerable practical knowledge of their profession. But it is by no means common; it is what has happened to very few of my friends within my own knowledge; and I only know one on the bench in Scotland at this moment who underwent that discipline; and I believe he underwent it accidentally from having intended to be a conveyancer or writer to the signet, and having afterwards changed his plan, in being called to the bar; and his case is therefore a very rare one, and rather an exception to the rule.

"The period required by law for preparation previous to admission is not more than 18 months. 'A man in six months,' says Professor Maconochie, 'may qualify himself to pass his civil law examination. He may then in the following year go up, and he does, practically speaking, then go up for his Scotch law examination; and therefore the answer to the question is 18 months.' There is thus no better security in Scotland than in other parts of the United Kingdom against incompetency in the professional man; no evidence of competency beyond what may be collected from public opinion and the position he holds in his profession. This may, in some degree, be relied on in the case of the barrister. In the case of the solicitor, the test is more dubious, and the consequences of incapacity more dangerous; nor is the client protected from such danger by the damages which the law allows

him in case of palpable mistake in practice, against the solicitor. On the whole, then, so far from presenting a model to guide us in the improvement or extension of legal education in England or Ireland, the Scotch system and practice seem to stand in need of considerable improvement themselves."

## LIVERPOOL LAW SOCIETY.

### REPORT OF THE COMMITTEE FOR THE YEAR ENDING 1st NOVEMBER 1847.

THE committee have to report, that during the last year five new members have been admitted, and the society has lost one by death, namely, Mr. Mathews.

It will be seen from the treasurer's account that there is a balance now standing to the credit of the society of 235*l.* 19*s.* 4*d.*

Your committee have to mention, as a subject of great interest to the profession, the proceedings that have been taken in reference to the formation of the Metropolitan and Provincial Law Association.

Your committee regard the establishment of this institution as one of those very important steps, to which many members of the profession have been aroused by the proceedings which took place about two years since, in connexion with gentlemen at Manchester, Leeds, and other places.

At the beginning of this year a correspondence was opened with the council of the Law Institution of London, who consented to receive a deputation from the Provincial Law Society's Association, to consider the best course that could be adopted for the establishment of a society, consisting of members of the profession throughout the kingdom, in order that their interests might be watched over, and unfair encroachments guarded against; whilst, at the same time, the improvement of the law should have due consideration from such a society.

Upon the first meeting of the deputation with the council of the Law Institution, that body received them most courteously; but, whilst the individual members of the council promised to enrol themselves as members of any institution that might be formed, the council decided, that, as a body, the terms of their charter prevented any such connexion.

The provincial deputation then had several meetings with their metropolitan brethren, at which members specially deputed by this society attended, and the result has been, the formation of the Metropolitan and Provincial Law Association, with a working committee of London and provincial men.

Various meetings have been held by that committee, and very great exertions used to increase the number of the members of the society; and your committee have pleasure in mentioning that the names have become now sufficiently numerous, both in town and in the provinces, and the amount subscribed to the general fund sufficiently large, to warrant the committee taking energetic steps for the re-

removal of the evils set out in the report circulated throughout the profession, and carrying out the suggestions for amendment therein set forth.

Your committee have, during the past year, taken into consideration the propriety of framing bills of costs, in respect of several businesses of common occurrence, with a view to uniformity of charges in the profession. These forms of bills are not quite ready, but the committee hope to lay them before the members in a few weeks for their consideration, and trust this will prove a great convenience to practitioners in general.

The members of the committee who now retire from office are, Messrs. Eden, Morecroft, Snowball, and Webster.

# **TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.**

*Last day of Michaelmas Term, 1847.*

## **Queen's Bench.**

Brown, Thomas, 16, Seacoal Lane, Skinner Street; and Farringdon Street

Clarke, C. Harwood, 53, Upper Bedford Place

Choppin, Charles, 2, Albany Road, Cambridge

Dore, William Henry, Worcester

Fraser, William, 19, Montpelier Square, Brompton; Poland Street; and King Street

Ford, H., Bar Hill, near Manchester; Brunswick Square; and Sydenham

Gibson, William Renshaw, Manchester

Gray, W., 13, Martha Street, Cambridge Heath

Hawley, Henry John Tooney, 1 Camden Street North, Camden Town; and Barton Place

Hadwen, R. S., 4, New Church Road, Cambridge; Old Kent Road; Walworth

Hutchinson, Thomas, Hartlepool

Jackson, Henry, Derby

James, Henry George, Sherborne

Johnson, J. Fortin, 9, Brook Street, Lambeth; and Walcot Square

Munday, John, Norwich

Newby, C. J., 2, Chapel Terrace, Kilburn

Newbald, Henry, Louth

Nevill, Richard, Tamworth

Parsons, G., 4, Aldermanbury Church Yard; and Tavistock Place

Sadler, Thomas, Bepton; and Aldingbourne

Tucker, Andrew, Plymouth

Ward, W. C., 49, Great Peter Street, Westminster

*Application to renew Certificate in Michaelmas Term, pursuant to a Rule of Court.*

Ratcliffe, Robert, New Mills, Derby; and Oldham

*Taking out and renewing Certificates before a Judge at Chambers, on the 26th of November.*

Attwood, Richard Henry, 18, Belvoir Terrace, Vauxhall Bridge Road; Swansea; and Pimlico

Atkinson, J., 30, Harrison Street, Gray's Inn

Road; Knightbridge; Brompton; and Harrison Street.

Barnes, Henry, Wakefield

Baynes, E. R., Aylesbury; and Adam Street

Blandford, Joseph, 86, Vauxhall Street, Vauxhall

Brown, William, Kingsholm

Bullock, R., 18, William Street, Hampstead Road; Paddington; Islington; and Sutherland Terrace

Chalk, J. Gust., Cookham, near Maidenhead

Catchpole, William S., 47, Windsor's Grove, Old Kent Road; Gorleston; and Leadenhall Street

Cardwell, Henry, 96, Tib Street, Manchester

Dalton, G. Wilkinson, Berwick-upon-Tweed; and Southampton

Eliot, J., 12, South Street, New North Road; and Battersea

Frankish, Samuel Cook, Malvern Cottages, Clapham Road; and Wells Street.

Furner, F., 1, Lansdowne Terrace, Newington; and 264, Albany Road

Gough, Thomas Tyudale, Dulverton

Green, James Fordham, Ware, Herts

Hooper, John, 14, King Edward Street, Westminster Road

Hayne, W. W., 5, Dorset Square; Croydon

Hodgson, John, 1, Wells Street, St. James's Square

Jardine, John Henry, Stoke by Clare

Johnson, H. Levees, 24, Park Street, Cambridge

Langham, James George, jun., Uckfield;

Arlington Street, Elizabeth Terrace; Shoreditch

Langham, Thomas Parker, Hastings

Langham, S. F., jun., 10, Bartlett's Buildings

Liddell, Richard, Cheltenham; Grafton Street

Lander, George Moseley, 86, Park Street; Camden Town; and Gloucester Street

Lord, Thomas, 24, Queen's Terrace, Bayswater

Lodge, James, Bare, near Lancaster.

Maddy, T. W., Sutton Court, near Hereford

Maude, Arthur Grey, 14, Great George Street, Westminster

Morel, Charles Baptiste, 2, Vine Cottage, Queen Street, Chelsea

Nixon, Charles, Lenton

Needham, Joseph, 50, Prospect Place, Southwark; Appleby; and Wolverhampton

Newman, S., 17, Chester Street, Grosvenor Place

Newland, Henry, Chichester

Prance, Courtney Connell, 25, Wharton Street; Lloyd Square, Plymouth; Holford Square

Paley, Charles Edward, York

Petherick, J. W., 106, Great Russell Street, Bloomsbury

Pearse, P. J. T., jun., 2 Lamb's Conduit Place; Great James Street, and Bernard Street

Phillips, John W., River Street, Myddelton Square; and Haverford West

Parkin, George Lewis, 45, Eastborne Terrace, Paddington; and Regent Square

Rowles, G. S. S., 10, Prospect Terrace, Gray's Inn Road; and 18, Queen Street, Clerkenwell  
 Sanders, Robert Muriel, 98, Stamford Street; Hart Street; Dean Street; Prince's Street  
 Smith, Charles, 3, Verulam Buildings, Gray's Inn

Scott, M. D., 50, Upper Berkeley Street; Hamilton Terrace, St. John's Wood; and Grove End Road

Smith, J. T., 27 & 34, Bernard Street, Russell Square

Taylor, John, 36, Hemingford Terrace  
 Taylor, David Passmore, 64, Chalton Street, Somers Town; and Harp Lane

Wood, Frederick John, Brown's Terrace Canonbury

Woodhouse, Richard, Hereford  
 Wodehouse, C., Morningthorpe; Bedford Street

Werc, Robert Arundel, Wellington; Bodmin

Warren, Henry, 30, Wellington Street, New Kent Road; and Charlotte Terrace  
 Worman, Robert Aloysius, 2, Southgate Villas, Hackney  
 Whitcombe, Robert H., Edghaston; Dudley; Bewdley; Frederick Street; and Gower Place.

## ADMISSION OF SOLICITORS AT THE ROLLS.

THE Master of the Rolls has appointed Wednesday, Nov. 24th, at the Rolls Court, Chancery Lane, at a quarter past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Tuesday, Nov. 23.

## ATTORNEYS' ADMISSIONS.—ADDITIONAL NOTICES.

*Michaelmas Term, pursuant to Judges' Orders.*

*Queen's Bench.*

[See the former List, p. 7, *ante*.]

*Clerks' Names and Residences.*

Young, Horace, 36, Lincoln's Inn Fields; and Church Row, Limehouse

Yates, Alfred, 7, Liverpool Street, Broad Street

*To whom Articled, Assigned, &c.*

John Young, Sise Lane  
 J. Whitehouse, Lincoln's Inn Fields  
 S. Yates, Bury Street, St. Mary Axe  
 E. I. Sydney, Liverpool Street

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS, VIZ. :—

### Rolls Court.

*In re Foulkes.* Nov. 3, 1847.

**BILL OF COSTS.—TAXATION.—TRUSTEE.—SOLICITOR.**

*A solicitor acting as self-constituted trustee, cannot make any charge for time or trouble, and a bill of costs containing any charges of this nature will be taxable after payment, unless the payment has been voluntary, and after a full opportunity of examining the items of the bill.*

THIS was a petition to obtain the taxation of a bill of costs relating to inquiries respecting a deceased legatee under the following circumstances:—The legatee was a soldier of the name of Roland, who, from entries in the War Office, appeared to have been killed in Spain in 1812. The legacy did not become payable until 1843, on the death of the testator's widow, who had also become his administratrix, in consequence of the death of his surviving executor intestate. Mrs. Meeson appointed as one of her executors a Mr. Richard Lowe, who was head clerk to Messrs. Foulkes and Parker. Mr. Lowe died about thirteen months since, but during his life he had got in the estate of Mrs. Meeson, and paid all claims upon it except this legacy, which was invested by Mr.

Foulkes in his own name to preserve it for the party properly entitled. The present petitioner was administrator of the original legatee. The bill of costs objected to amounted to 40*l*. The petitioner had offered to pay 35*l*., if Mr. Foulkes would give up the claim upon which he insisted to have a bond of indemnity. This, however, Mr. Foulkes refused to do. At the time when this negotiation took place the bill had been delivered, but the amount of the charges had only been roughly ascertained from the books of Messrs. Foulkes & Co. Subsequently, Mr. Foulkes sent the petitioner a cheque for the balance due upon his legacy, after deducting the amount of his bill, which was delivered simultaneously with the cheque. The bill contained a variety of charges for time and trouble.

Mr. *Malins* relied upon this circumstance as making the bill taxable.

Mr. *Kindersley*, for Mr. Foulkes.

Lord *Langdale* said, that this bill having been paid was not taxable as of course. He collected that Mr. Foulkes had made himself trustee of the property. In doing so he appeared to have acted with great propriety. The inquiries made for the representative of the legatee seem to have been necessarily expensive, and may have been quite justifiable

but the payment was not a payment of money down; it was not made after an opportunity had been offered of examining the items of the bill, but by deducting the amount of the bill, and handing over the balance. Had this transaction been an agreement, after delivery of the bill, the cases have gone so far as to refuse taxation. But this was not the case. Still taxation could not be ordered without showing specific errors, but in this case the solicitor had made charges for his own time and trouble; therefore, although with reluctance, he must order the taxation.

### Vice-Chancellor of England.

*Finden v. Stephens.* August 2, 1847.

#### INTERLOCUTORY APPLICATIONS.—COSTS.— 45TH ORDER, MAY, 1845.

*After the filing of a bill, plaintiff gave notice of motion for an injunction, which motion, at the request of defendants, stood over; in the meantime defendants filed a demurrer, which was over-ruled, but, on appeal, allowed. Plaintiff being ordered to pay the costs of the demurrer and the costs of the suit. Held, that the defendants were not entitled to the costs incurred by them in preparing to resist the motion.*

THIS was a petition by the plaintiff, seeking to have certain costs disallowed, and the Master's report reviewed; it stated that the bill was filed in the 14th of August, 1846, and a notice of motion for an injunction was served on the 18th of August, and came on to be heard on the 21st, but, at the request of the defendants, stood over until the 26th; that on the 22nd of August, the defendants filed a demurrer to the bill for want of equity; on the 31st of August the demurrer came on to be heard, but was ordered to stand over until Michaelmas Term, when it was overruled by the Vice-Chancellor; that a petition of rehearing was presented; that on the 11th of December the Lord Chancellor allowed the demurrer, and ordered that it should be referred to the taxing master to tax the defendants their costs occasioned by the demurrer, and also their costs of this suit; and that such costs, when taxed, should be paid by petitioner to the defendants. The petition went on to state, that although notice of motion had been given by petitioner, no order had ever been made on the merits; that the taxing master, in taxing the defendant's bill of costs, had allowed the defendants all their costs incurred in preparing to resist the motion for the injunction, which the petitioner insisted he ought not to have done.

Mr. Bethell and Mr. Moxon, for the petition, contended that as the demurrer by the defendants had been overruled by the Vice-Chancellor, plaintiff's motion, if it had been made, would probably have been successful, in which case plaintiff's costs would have been costs in the cause, but defendant's costs would not have been costs in the cause; that the costs of interlocutory applications were not costs in the

cause, and the Lord Chancellor, on appeal, having, in the order made by him, said nothing as the costs of the motion, they could not under that order be considered as costs in the cause. They cited *Lewis v. Armstrong*, 3 Myl. & K. 69; *Farquharson v. Pitcher*, 4 Russ. 510; *White v. Lisle*, 4 Madd. 226.

Mr. Stuart and Mr. Bazalgette, contra, cited the 45th Order of May, 1845, under which they contended defendants were entitled to their costs of the motion. The order was to the effect, that where a demurrer to the whole or part of a bill was allowed upon argument, the plaintiff, unless the court ordered the contrary, was to pay to the demurring party the costs of the demurrer, and if the demurrer was to the whole bill, the costs of the suit also. They cited *Dugdale v. Johnson*, 5 Hare, 92.

The Vice-Chancellor said, this was merely a question of costs. The Lord Chancellor had made an order which directed that it should be referred to the taxing master to tax the costs of the defendants occasioned by the demurrer and the costs of the suit. The only question was, whether the costs occasioned by interlocutory applications on collateral proceedings were to be included in such costs; his opinion was that they were not. If the circumstances under which the motion had been made and abandoned had been mentioned to the Lord Chancellor, he might in his order have gone on to say, "and also the costs of the motion," and that would have settled the question. Suppose the costs had been incurred by the defendants themselves, for instance, if they had moved to alter the bill off the file, on account of its not having been filed with the authority of the plaintiff, and that the plaintiff might give security for costs; such motions as those might have been made, and yet the defendants might afterwards have thought proper to file a demurrer. Would the costs of those motions go as costs in the cause? The rule was, that those costs only which were necessary for the purpose of carrying on the suit to a hearing, were included in the costs of the cause, but that those which were merely optional and did not necessarily arise in bringing the suit to a determination, were not included. He thought the costs sought to be disallowed in the present instance were of this latter description, and must therefore be disallowed.

### Vice-Chancellor Knight Bruce.

*Callow v. Howle.* Nov. 5, 1847.

#### WIFE'S SEPARATE ESTATE.—SOLICITOR AND CLIENT.—COSTS.

*A solicitor, who had transacted business in reference to the separate property of a married woman, both previously and subsequently to her marriage, and who had proved against her husband for the amount, under a fiat, filed a bill against the husband and wife, and the trustees of the settlement, seeking to charge the wife's separate estate in respect of the debt.*

Held, that the wife's estate was not directly

*liable, and that the bill must be dismissed as against the husband and wife, without costs, and as against the trustees, with costs.*

THE bill in this case was filed by Mr. Joseph Callow, a solicitor, praying that he might be declared entitled to stand as a creditor of the separate estate of the defendant, Mrs. Elliot, comprised in her settlement, for so much of his bills of costs as became due for business done by him, by her direction, on account of her and of her separate estate; that he had a lien upon the leasehold estates comprised in such settlement, upon the settlement, and upon deeds of appointment of new trustees, for such bills of costs; that he might be declared entitled to have the amount due to him in respect of such part of his bills of costs paid out of the rents and profits of the leasehold estates accruing during Mrs. Elliot's life, and that the trustees under her settlement might be ordered to pay the same accordingly. The defendants were Mr. and Mrs. Elliott, and the trustees of the settlement. By the joint and separate answer of the husband and wife, they denied that any contract had been entered into on the wife's part, rendering her separate estate liable. It appeared that the plaintiff, Mr. Callow, had acted for Mrs. Elliott previously to her marriage, in reference to the property settled afterwards to her separate use for her life, and afterwards to such purposes as she should appoint. He had also acted in the preparation of the settlement, and in the appointment of two trustees. The bills of costs had been delivered to the husband, Mr. Elliott, who had paid a portion on account. Mr. Elliott, the husband, afterwards became bankrupt, and the solicitor proved under the fiat for his bill, which, on taxation, had been reduced very slightly. The bankrupt's estate did not produce a dividend of a halfpenny in the pound.

*Wigram and Younge* for the plaintiff, cited *Murray v. Barlee*, 4 Sim. 83, S. C. 7 Sim. 124, and 3 My. & Keen, 209, upon appeal; *Owens v. Dickenson*, 1 Craig & Phil. 48.

*Kenyon, Parker, and Spurrier*, for the defendants, but were not desired to be heard by the court.

Sir J. L. Knight Bruce, V. C. In this case, as the question of the personal liability of the trustees, or either of them, to the amount of the bill of costs, or any part of it, is not before me, I give no opinion upon it. Nor is the question before me, whether, if the trustees have paid, or shall pay, any part of the bill, they will be entitled to deduct the amount; but the question before me, is whether Mr. Callow, the plaintiff, the solicitor, who has a most just demand,—that is, just against some person or persons,—the question is, whether he has a direct right to resort to the separate property of this lady? Now, certainly, I cannot think that she has, either in writing or verbally, charged her property, or has expressly contracted or promised to pay, either from her separate estate or otherwise. The attempt to create a charge against her property is put upon an implied contract, which is supposed to exist on her part, arising from the nature of the business, because it was done

mainly in respect of her separate estate. I must say, and perhaps with some regret, that the case appears to me, for that purpose, totally to fail in every other respect than as it relates to the deeds, or one of the deeds, indorsed upon the settlement; upon which I shall say a word presently. In my judgment, the mere circumstance of the business being done in respect of the separate property of a married woman, vested in trustees, is insufficient to show that the property of a married woman is liable directly to the attorney, for expenses incurred in support of that property. The trustees may be liable, or some other person or persons may be liable, but it does not in my opinion follow that the property of the wife, or that the wife in respect of the property is of necessity liable. There is an absence of any proof of liability, and an absence of any ground of inference of liability. With regard to the deeds indorsed, the case as to one of those deeds, at least, would give rise to a question of more difficulty, but, for the course that has been taken by Mr. Callow, with respect to this demand. He had delivered the bill for all the business done (including this) to the husband, and in the husband's name, treating the husband solely as his debtor. He has procured the bill to be taxed upon that footing, as between him and the husband. He has obtained a rule or order for a judgment against the husband alone for the amount, and upon the footing of the taxation. The taxation may be creditable to him in respect of its very small amount. The husband became bankrupt, almost, if not quite contemporaneously with the taxation. And then Mr. Callow under the bankruptcy proved the whole amount, except as reduced by taxation under the fiat against the husband, as a debt due from the husband alone. Taking all the circumstances together, I am of opinion that the court can neither accede to the demand made against the separate estate, or direct a course of inquiry for the purpose of charging it. With whatever regret I may come to that conclusion, it is only one to which I can come to in this case. I am afraid that I must give the trustees their costs. With regard to Mr. and Mrs. Elliott, they stand upon a different footing. I will hear their counsel, if they wish to say anything upon the subject.

*Parker and Spurrier* were then heard upon the question of costs, and insisted that they must be borne by the plaintiff, who had made his election by proving against the bankrupt's estate, and that having turned out to be fruitless, had made an experiment, by this bill, against the wife's estate, in which he had also failed.

Sir J. L. Knight Bruce, V. C. Dismiss the bill as against Mr. and Mrs. Elliott, without costs.

Queen's Bench.

(Before the Four Judges.)

*Evans v. Bell.*

BILL OF EXCHANGE.—PLEADING.

*A declaration on a bill of exchange followed*

*the form given in the new rules till it came to the breach, where the only allegation was, that "the defendant disregarded his promise and undertaking, and did not pay the said bill," but omitted to add the words, "when it became due." Special demurrer on this ground. Held, that this demurrer might be set aside as frivolous.*

Mr. Phipson moved for a rule to show cause why an order of Mr. Justice Patteson made in this case should not be set aside. This was an action upon a bill of exchange by an indorser against the acceptor, and the declaration followed the forms given under the new rules,<sup>a</sup> and alleged that the bill "required the defendant to pay to A. B. (the drawer) or order—l. three months after date thereof, which period has now elapsed." But the new rules likewise directed that the declaration should go on to allege that "the defendant did not pay the amount thereof when it became due." In the declaration in this case the plaintiff alleged the drawing, acceptance, and indorsement, and went on thus, "of all which the defendant then had due notice, and then promised the plaintiff to pay the amount thereof according to the tenor and effect thereof, and of his acceptance thereof." The breach was thus stated—that the defendant "disregarded his said promise and undertaking, and did not pay the amount of the said bill," omitting the additional words, "when it became due." There was a demurrer to this declaration, assigning for cause that the breach was insufficient for not alleging that the bill had become due. The case had been taken before Mr. Justice Patteson at chambers on a summons to set aside the demurrer as frivolous. His lordship made order to that effect. This order is incorrect. It is at all events a very new and doubtful question whether this declaration can be supported; and it was so treated by Mr. Baron Alderson in a case of exactly the same kind brought before him at chambers, in which he refused to make an order, declaring the demurrer to be frivolous. The old form of declaration on a bill of exchange prevented such a question as this from arising, for it alleged the acceptor to become liable to pay the amount of the bill "according to the tenor and effect of the said bill of exchange," and then averred his promise consequent upon that liability, and concluded by a distinct averment, "that he hath not yet paid," &c. The old form, therefore, included the days of grace under the words "tenor and effect of the bill." The form under the new rules, that the defendant did not pay when the bill became due, was no doubt intended to supersede the lengthened form previously in use, but here the plaintiff has neither followed the one nor the other. The allegation that the defendant hath disregarded his promise is not sufficient to raise a legal liability. [Lord Denman. Cannot the breach of the promise be referred to the pro-

mise itself, so as to see what it is that the defendant has disregarded?] It cannot. The bill as set forth shows a promise to pay at three months after date. There is nothing on the face of this declaration to show that there are three days of grace to be added to the three months of date. The breach of the promise may be a breach at the date of the three months, and not of the three months and three days. There is now no allegation of the "tenor and effect of the bill," for otherwise as the custom of merchants has been imported into the law of the land,<sup>b</sup> the allegation might be sufficient. But upon this declaration it appears that the defendant accepted a bill three months after date, and promised to pay three months after date, and broke his promise. But then as the law allows three days beyond the three months the declaration appears to be for a cause of action which had not in law arisen, for three months alone are spoken of, and nothing is said of the three days.

The court intimated that perhaps a reference to the writ and the declaration would show that the writ was not issued till more than three days after the three months, and then the allegation in the declaration that at the time of the declaration the defendant had not performed his promise might get over the difficulty. But the judges desired not to be considered as expressing any opinion on this point, and they reserved their decision on the application until they should have an opportunity of consulting Mr. Justice Patteson.

*Cur. ad. vult.*

*Monday, Nov. 8.* On this day at the sitting of the court,

Lord Denman said, We have consulted my brother Patteson, who continues to be of the same opinion as when he made the order which it is now sought to set aside. He thinks that there must have been some difference in the facts of the case said to have occurred before Mr. Baron Alderson. My brother Patteson thinks, and we all concur with him in the opinion, that this demurrer is frivolous. The order, therefore, will stand, and the present application be refused.

*Rule refused.*

#### Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

*Landells v. Ball.* Trinity Term, June 9 & 12, 1847,

#### JUDGMENT AS IN CASE OF NONSUIT.

*Where, in the Court of Queen's Bench, a rule for judgment as in case of a nonsuit has been discharged on a peremptory undertaking, it is incumbent on the plaintiff to draw up the rule and take notice of the condition upon which the rule which would otherwise have been made absolute was discharged. Where, therefore, a rule for judgment as in case of a nonsuit was discharged on a peremptory undertaking to try, and the plaintiff did not go to trial pursuant to his*

*undertaking, upon which the defendant obtained a rule for judgment as in case of a nonsuit and signed judgment, the court refused to set aside the judgment on the application of the plaintiff, on the ground that he had not been served with a copy of the rule discharging the rule for judgment as in case of a nonsuit on the peremptory undertaking in time to give notice of trial in time to comply with the undertaking. Semble, that the practice has been different in the Court of Common Pleas.*

\* THIS was a rule obtained by *Bramwell* to amend a rule for judgment as in case of a nonsuit, made hereon on the 8th of May last. It appeared by the affidavits used in moving for the rule, that issue was joined in the cause on the 22nd of May, 1846, and that notice of trial was given for the 26th of that month. This was continued to the sittings after term, and was countermanded on the 6th of June. On the 21st of January, 1847, a rule *nisi* for judgment as in case of a nonsuit was obtained, which, on the 1st of February, was discharged on a peremptory undertaking by the plaintiff, to try at the first sittings after Easter Term.

not do, nor did the plaintiff's attorney draw up the rule discharging the judgment as in case of a nonsuit. The rule was drawn up by the defendant's attorney, but not effectually served on the plaintiff's attorney until the 10th of April, which was too late to give the plaintiff time to give notice of trial for the first sittings in Easter Term, in pursuance of his peremptory undertaking. On the 8th of May a rule for judgment as in case of a nonsuit was obtained against the plaintiffs, for not trying at the sittings in Easter Term, pursuant to his peremptory undertaking, and judgment was signed upon it. Subsequently (on the 20th May) *Bramwell* obtained a rule to set aside the judgment on the ground of irregularity, and contended, that it was for the defendant to have drawn up the rule of the 1st of February, discharging the judgment as in case of a nonsuit, and have served it in time to enable the plaintiff to give notice of trial for the first sittings in Easter Term. He cited *Gingell v. Bean*, 1 Man. & Gr. 50; *Scott*, N. R. 153; *Knight v. Smith*, 6 M. & G. 1016, and 13 Law Jour., N. S., C. P. 115; *Sawyer v. Thompson*, 9 M. & W. 248.

*Worlledge* now (9th June) showed cause, and contended that the judgment signed hereon was perfectly regular. No doubt it had been ruled in the Common Pleas that it was for the defendant to draw up a rule discharging a rule for a peremptory undertaking and serve it on the plaintiff, but in the Court of Queen's Bench the practice is different, and it is for the plaintiff to draw up the rule. With regard to the case of *Sawyer v. Thompson*, (9 M. & W. 248,) that could hardly be said to be any decision, as Mr. Baron Alderson, who was sitting alone, decided the case upon the authority of *Gingell v. Bean*, (1 Man. & Gr. 50,) and the practice of the Queen's Bench was not brought under his notice.

*Bramwell* appeared to support his rule.

*Wightman, J.* I suppose, Mr. *Bramwell*, you rely on the cases of *Gingell v. Bean* and *Knight v. Smith*.

*Bramwell.* Yes, my lord, confirmed by *Sawyer v. Thompson*, in the Exchequer.

*Wightman, J.* This is a matter upon which it is desirable that the courts should agree, it being a mere matter of practice. I will see the other judges on the subject.

*Cur. adv. vult.*

*Wightman, J.*, (12th June,) gave judgment. In this case Mr. *Bramwell* moved to set aside a rule absolute for a judgment, as in case of a nonsuit after a peremptory undertaking. The question is, whether the plaintiff or the defendant is bound to draw up the rule discharging the rule for judgment, as in case of a nonsuit, and to take notice of its terms. The master reports that the practice in this court is, that when a rule for judgment as in case of a nonsuit is discharged upon a peremptory undertaking, it is incumbent upon the plaintiff to draw up the rule, and to take notice of the condition upon which the rule, which would otherwise have been made absolute, was discharged. There would have been no doubt upon the point, but for the cases cited of *Gingell v. Bean*, and *Knight v. Smith*, in the Common Pleas, the former of which was followed by Alderson, B., sitting alone in the Court of Exchequer, in the case of *Sawyer v. Thompson*, in which he decided on the authority of *Gingell v. Bean*, that the plaintiff was not bound to take notice of the rule unless it was served upon him. It seems that such has been the practice of the Court of Common Pleas, but that the practice of this court has been different; and it does not appear what is the practice of the Court of Exchequer, as the dictum of Alderson, B., was come to upon the authority of *Gingell v. Bean* only. In the absence of authority upon the point, I see no reason why I should reject the rule of practice which exists here, to adopt that of the Court of Common Pleas. It appears to me that the rule which has prevailed here is a very reasonable one, and I therefore think the rule for setting aside the nonsuit should be discharged without costs.

Rule discharged without costs.

### Common Pleas.

*Price v. Belcher*, Sittings in Bank after Trinity Term, 1847. •

ELECTIVE FRANCHISE.—REFUSAL OF VOTE AT THE POLL.—ACTION AGAINST RETURNING OFFICER.

*Where the returning officer at an election for a member of parliament, without any malicious motive and not wilfully, refused to receive the tendered vote of the plaintiff, whose name duly appeared on the register of voters, and who answered in the affirmative the questions directed to be put by act of parliament, but who really was not properly qualified to vote: Held, that the plaintiff*



*could not maintain an action on the case against such returning officer for so refusing.*

**ACTION** on the case. The declaration stated, that the defendant, before and at the time of the committing of the grievance hereinafter mentioned, and after the passing and coming into operation of a certain act of parliament, 6 & 7 Vict. c. 18, made, &c., and intituled, &c., was mayor of the borough of Abingdon, in the county of Berks, which borough before and at the time of the committing of the said grievances was and now is a borough that returned and returns one member to serve in parliament, and to him the defendant, as mayor of the said borough, of right belonged by virtue of his said office of mayor, the execution of any writ or precept for the election of a member to serve in parliament for the said borough, which should be delivered to him, so being such mayor as aforesaid, and to be and officiate as returning officer at such election; that on, &c., a writ (setting out in full) for the election of a Burgess in the place of Sir F. Thesiger, the then Burgess for the borough, who had accepted the office of Attorney-General, which said writ afterwards and before, &c., to wit, &c., was delivered to one J. B. Monck, Esq., the sheriff of the same county of Berks, to be executed in due form of law, by virtue of which said writ the aforesaid J. B. Monck so being then and there the sheriff of, &c., afterwards, &c., to wit, &c., made his certain precept in writing, under the seal of him the said J. B. Monck, of his office of the county of Berks aforesaid, directed to the mayor of the borough of Abingdon aforesaid, to be executed in due form of law, by virtue of which said precept, and by virtue of the writ aforesaid, they the said burgesses of the borough of Abingdon being in that behalf duly forewarned, to wit, on, &c., at the borough of Abingdon aforesaid, before him the defendant so being mayor and returning officer of, &c., were assembled to select a Burgess for the said borough according to the exigency of the said writ and precept aforesaid, and during that assembly to that intention and before such Burgess by virtue of the writ and precept aforesaid was elected, to wit, on the day and year last aforesaid, at, &c., he the plaintiff then being, and the plaintiff avers that he then was a Burgess of the borough aforesaid, and the name of the plaintiff being then inserted and then standing and being, and the plaintiff avers that his name was then inserted and then stood and was in the register of voters then in force for the said borough, to wit, the register of all persons entitled to vote in the election of a member to serve in parliament for the said borough, made and formed according to the provisions of the statutes in that case made and provided, and the plaintiff's said name being and standing, and the plaintiff avers that his said name then stood and was No. 216 in the said register of voters, and the plaintiff being then entitled, and the plaintiff avers that he was then entitled, to give his vote for the choosing of a Burgess

of the said borough, according to the exigency of the writ and precept aforesaid, before him the defendant, mayor of that borough, to whom then and there it did duly belong as such returning officer as aforesaid, at the said election to take and allow the vote of him the plaintiff of and in the premises, was ready, and he the plaintiff then offered to give, and then and there tendered, his vote for choosing J. Caulfeild, Esq., a Burgess for that parliament, by virtue and according to the exigency of the writ and precept aforesaid, and he the plaintiff was then and there ready and willing to answer, and did then and there answer in the affirmative, to him the said defendant, as being such returning officer as aforesaid, the question authorised by the act of parliament aforesaid to be put by the returning officer at any election of a member or members to serve in parliament, if required on behalf of any candidate, to any voter at the time of his tendering his vote at any such election, and which he the defendant, so being, &c., was required on behalf of Sir F. Thesiger, a candidate at the said election, to put, and did put, to him the plaintiff, and he the plaintiff then and there offered to take the oath by the said act of parliament authorised to be administered by the returning officer at any election of a member or members to serve in parliament, if required on behalf of any candidate at the time aforesaid, to any voter, if he the defendant, so being, &c., should be required to administer, and should then offer to administer, the said oath, of all which he the defendant so being, &c., then had notice, but he the defendant was not then required to administer, and did not then offer to administer, the said oath, and the vote of him the plaintiff then and there of right ought to have been received and admitted and allowed to be entered and recorded, and the defendant so being then and there, &c., was then and there requested to receive and administer and allow to be entered and recorded the vote of him the plaintiff so tendered as aforesaid: Nevertheless, he the defendant so being, &c., well knowing the premises, but contriving, and wrongfully, fraudulently, and wilfully intending to injure and damnify him the plaintiff in that behalf, and wholly to hinder and disappoint him of his privilege of and in the premises, did then and there hinder him the plaintiff from giving his vote in that behalf, and did then and there absolutely reject the vote of him the plaintiff so tendered at the said election as aforesaid, and did then and there absolutely refuse to permit him the plaintiff to give his vote for choosing a Burgess for the borough of Abingdon aforesaid to the parliament aforesaid, and did not receive, nor admit, nor allow to be entered and recorded, the vote of him the plaintiff for choosing J. Caulfeild, Esq., a Burgess for that borough to serve in that parliament, contrary to the said act of parliament and to the statute in that case made and provided, and a Burgess of that borough was elected for that parliament, he the plaintiff being so excluded from giving his vote, and his vote being so rejected by him the defendant, so being, &c., and



without any vote of him the plaintiff then and there by virtue of the writ and precept aforesaid, to the injury, enervation, and destruction of the said privilege of him the plaintiff in the premises, and the deprivation and loss of his said right to vote at the said election, and to have his vote received and admitted and allowed to be entered and recorded by the defendant so being, &c. The second count, after alleging as in the first down to the tendering of the vote, proceeded:—and the vote of him the plaintiff then and there of right ought to have been received and admitted and allowed to be entered and recorded on the poll-books of the said election by the said defendant, so being, &c., to the end and intent that when he the defendant, so being, &c., should after the final close of the poll at the said election cast up the number of votes as they should appear on the said poll-books, and should openly declare the state of the poll, and make proclamation of the member chosen, according to the statutes in that case, &c., the said vote of him the plaintiff should be reckoned, included, and cast up by him the defendant, so being, &c., among the number of votes so to be cast up as aforesaid, and in order to the making of the said declaration and proclamation as aforesaid, as having been given, admitted, and allowed for choosing the said J. Caulfeild, Esq., a burgess for that parliament, and the defendant so being, &c., was then and there requested to receive and admit and allow to be entered and recorded on the poll-books, &c., (following the words of the previous averment): Nevertheless, he the defendant, being, &c., well knowing the premises, and, &c., (as in the first count) did then and there, instead of so receiving and admitting and allowing to be entered and recorded on the poll-books of the said election the vote of the plaintiff to the end and intent as aforesaid, did then and there, when the plaintiff so tendered as aforesaid, and so requested him the defendant to receive the same, and to admit and allow the same to be recorded and entered as aforesaid, to the end and intent as aforesaid, wholly refused to receive the same to be so entered and recorded, to the end and intent as aforesaid, but on the contrary thereof, did then and there cause and procure the said vote of the plaintiff to be entered within a certain space or column of the said poll-books, which space or column was and is headed with the words "For whom tendered," and the entry of any vote within which space or column indicates and signifies, and the plaintiff avers that the entry of his vote within the said space or column did and does indicate and signify either that the name of the plaintiff had been omitted from the register of voters then in force for the said borough in consequence of the decision of the barrister who had revised the list from which such register had been formed, or that the vote of some other person had already been received and allowed to be entered and recorded on the poll-books of the said election as being registered in respect of the same qualification as that by virtue of which the plaintiff then claimed to

vote, and that therefore the said plaintiff was not entitled when he the defendant, so being, &c., should after the final close of the poll of the said election cast up, &c., to have the said vote of him the plaintiff reckoned; included, and cast up by him the defendant, so being, &c., among the number of votes so to be cast up as aforesaid as having been given, admitted, and allowed for choosing the said J. Caulfeild, Esq., a burgess for that parliament. And the plaintiff further says, that when he the defendant, so being, &c., did, after the final close of the poll at the said election, cast up the number of votes, &c., according to the statute, &c., he the defendant did then wholly refuse, neglect, and omit to reckon, include, and cast up among the number of votes so cast up, and in openly declaring the state of the poll, he the defendant did wholly refuse, neglect, and omit to reckon and include among the number of votes given for choosing the said J. Caulfeild, Esq., a burgess for that parliament then returned by him, so being, &c., as and for the true state of the poll in that behalf, and he the defendant did not then so reckon and include among the said number of votes and in the state of the poll so then and there openly declared as aforesaid the said vote of him the plaintiff, and a burgess of that borough was elected for that parliament, and proclamation was made of a member chosen without the vote of him the plaintiff being so reckoned, included, and cast up as aforesaid, whereby the privilege of the plaintiff in that behalf was wholly injured, enervated, and destroyed, and the plaintiff was wholly deprived of the benefit of his right to vote at the said election and to have his said vote received, &c., and recorded in the said poll-books, and to have the same reckoned, included, and cast up by the defendant, so being, &c., among the number of votes so cast up after the close of the poll as aforesaid, and to have the same reckoned and included in the declaration by him the defendant, so being, &c., of the state of the poll among the number of votes given, &c., for choosing, &c. The third count, after commencing in the same manner, went on to allege:—and it then and there became and was the duty of the defendant to enter the said vote of the plaintiff so tendered as aforesaid upon the poll-books of the said election without entering into or allowing any scrutiny by or before him the defendant, so being, &c., with regard to such vote. Nevertheless, he the defendant being then and there mayor, &c., well knowing the premises, &c., (as before) and further to vex, harass, and delay the plaintiff in the exercise of his privilege of voting, and to deprive him of the benefit of his said privilege of and in the premises, did then and there wrongfully order and allow a scrutiny to be held before him the defendant, so being, &c., to wit, at, &c., with regard to the vote of him the plaintiff so tendered as aforesaid, and with regard to the right and qualification of him the plaintiff to give his said vote and to have the said vote admitted and allowed, and did further wrongfully take upon himself to adjudge and

determine at and after such scrutiny so ordered and allowed and held as aforesaid, that the plaintiff was not then entitled to give, and had no qualification enabling him to give, his vote at the said election, and that he was not then entitled to have the same admitted and allowed, contrary to the provisions of the said act of parliament and to the statute, &c., whereby the plaintiff was not only then wrongfully vexed, harassed, delayed, hindered, and obstructed in the exercise of his said privilege of voting, but was then wholly deprived of the benefit of his said privilege, and a burgess of that borough was elected for that parliament, the vote of him the plaintiff being so hindered and obstructed, and without any vote of him the plaintiff then and there by virtue of the writ and precept aforesaid, and also by means of the premises, the plaintiff was and is otherwise injured and damaged.\*

Plea, not guilty by statute, to all the counts. The trial took place before Maule, J., and the jury found a verdict for the defendant, subject to a motion to enter a verdict for the plaintiff for 40s. damages. The argument on the rule obtained for that purpose took place in Easter Term last.

*Whately, Kingslake, Serjeant, and Phipson*, in support of the rule.

*Talfourd, Serjeant, and Maynard, contra.*

*Cur. adv. vult.*

July 3, 1847. The judgment of the court was delivered by

*Coltman, J.* This was an action against the defendant as the returning officer for the borough of Abingdon, for refusing to allow the plaintiff to give his vote at the election of a member of parliament for that borough. The name of the plaintiff appeared on the register of voters for the borough, but he had ceased to reside there at the time of the election. He tendered his vote, however, at the election, insisting that on his answering satisfactorily the questions put by the returning officer and taking the requisite oaths, he was entitled to have his name placed on the poll and reckoned up at the final close of the poll. The returning officer rejected the plaintiff's vote, and for that the present action is brought. The jury at the trial having declared themselves satisfied that the plaintiff was not entitled to vote, and that the defendant was not actuated by any malicious motives, and that the act was not wilful, found a verdict for the defendant, but leave was reserved to the plaintiff to move to have the verdict entered for him for 40s. if the court should be of opinion, upon the facts proved, that in the absence of malice an action could be maintained. On behalf of the plaintiff it has been contended, that as the provisions of the 6 & 7 Vict., c. 18, s. 82, are express that it shall not be lawful to reject any vote tendered at any election of members to serve in parliament by any person whose name shall be upon the register in force for the time being, except

by reason of its appearing to the returning officer or his deputy, upon putting such questions mentioned in the statute, that the claimant is not the same person whose name appears on such register as aforesaid, or that he had previously voted at the same election, or except by reason of such person refusing to answer the questions or either of them, or to take the oath or make the affirmation against bribery; that it is therefore a clear violation of the returning officer's duty to reject the vote, and thus prevent the party from enjoying the right given him by the statute, and one for which an action may be maintained. *Ashby v. White*, 2 Ld. Raym. 938, and Lord Denman's dictum in the case in 6 Q. B. Rep., were particularly relied upon on behalf of the plaintiff. On the part of the defendant, the 99th section of the 6 & 7 Vict. c. 18, was relied upon, by which it is provided, that "no person shall be entitled to vote at any future election for a member or members to serve in parliament for any city or borough, unless he shall, ever since the 31st of July, in the year in which his name was inserted in the register of voters then in force, have resided, and at the time of voting shall continue to reside within the city or borough in the election for which he shall claim to be entitled to vote, or within the distance thereof required by the said recited act to entitle such person to be registered in any year." The plaintiff, it was argued, in seeking to vote contrary to the express provision of the act in that respect, was seeking to commit a misdemeanour for which he might become criminally responsible. It was not denied that the returning officer, in refusing to admit the vote of the plaintiff, had mistaken his duty, and might under the act have subjected himself to a criminal information; but it was contended that the rejection of the vote could not properly be made the ground of a civil action like the present; and this view of the case appears to us to be correct. The object of the statutes 2 W. 4, and 6 & 7 Vict., in limiting the questions to be put to voters, appears to be to prevent the necessity for going into nice questions of law and fact, so that all who possessed a right to vote, might exercise that right within the time now given at elections for that purpose. This restriction of the inquiry, highly convenient with reference to the general conduct of elections, was incidentally attended with this inconvenience, that it put it in the power of parties not entitled to vote to have their names put on the poll, and thus influence the election. Though, however, a party situated as the plaintiff has the power to compel the returning officer, under the apprehension of a prosecution, to put his name on the poll, he has not the right to do it so long as he is acting in direct contravention of the act of parliament, the provisions of which expressly declare that he shall not be entitled to vote, and the rejection in such a case would not amount to a violation in the law of anything touching the right. The ground of the present action is the injury done to the plaintiff's right, and we think, for the

\* This declaration was held to be good on special demurrer. See the report, 11 Jur. 675.

reasons above given, he is not entitled to vote, and consequently has suffered no injury; and that the rule in the present case must be discharged. This is the judgment of my brothers Maule and Cresswell and myself. The Chief Justice having been counsel in the cause, declines to take any part.

Rule discharged.

### Court of Bankruptcy.

*Hallet v. Lee.* 5th Nov. 1847.

#### TRADER DEBTOR'S SUMMONS.—SUFFICIENCY OF SURETIES.

*The objection that one of the sureties to a deed given by a debtor under the stat 1 & 2 Vict. c. 110, if a member of parliament, is not necessarily fatal.*

THE defendant was served with an affidavit of debt, and notice calling for immediate payment of a debt exceeding 3,000*l.*, under the stat. 1 & 2 Vict. c. 110, s. 8, and gave notice, through his solicitor, of his intention this day to attend before the commissioner to submit a bond, with sureties for the approval of the commissioner. A bond, duly executed, having been laid before Mr. Commissioner Fane for his approval, the plaintiff's solicitor objected, that one of the sureties (Mr. Ward) was a

The writ requires the trader, within twenty-one days after personal service of affidavit and notice, to pay, secure, or compound, to the satisfaction of the creditor, or enter into a bond in such sum, and with two sufficient sureties, as a commission of bankrupts will approve of, to pay or render, &c.

member of parliament, and as such disqualified from being received as bail. Peers and members of parliament were not liable to the ordinary process of the courts, and therefore were not allowed to justify as bail.

Mr. Commissioner Fane said the objection was one to which he was little disposed to give effect; however, he would consult his brother commissioner, (Serjeant Goulbourn,) who was better acquainted with common law practice. The learned commissioner (after retiring for a short time) stated, that he had consulted Serjeant Goulbourn, and that it certainly did appear from the cases of *Duncan v. Hill*, 1 D & Ry. 126, and *Graham v. Sturt*, 3 Taunt. 429, that members of the House of Commons could not justify as bail. Still, he felt it was exceedingly hard that a defendant who denied a debt, and was ready to try the plaintiff's right, should be made a bankrupt under such circumstances. If the defendant's attorney could substitute another surety for Mr. Ward, he should approve of the bond.

The defendant's attorney said, the twenty-one days after service of the affidavit and notice would expire this day,<sup>a</sup> and he feared there would be insuperable difficulty in finding another surety before the close of the day.

Mr. Commissioner Fane said the act gave no authority to extend the time, whilst the courts of common law, if such an objection was made, might adjourn the justification of bail. There was no analogy therefore in the two cases. After some further consideration he determined, under all the circumstances, that the sureties were sufficient, and certified his approval.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Law of Attorneys.

[In continuing the New Series of the Analytical Digest of Cases, classified according to the subjects adjudicated upon, we select the recent decisions on the Law of Attorneys, and include such of them as can be conveniently arranged in the present number.]

#### ARTICLES OF CLERKSHIP.

*Enrolment service.*—To induce the court to exercise the power given it by the 9th sect. of the 7 & 8 Vict. c. 73, of directing that the service of an article clerk shall be taken to commence before the filing of the affidavits required by the 8th section, some grounds for the non-compliance with the regulations of the act must be shown. *Anon.* 34 L. O. 597.

#### BAILIFF'S FEES.

*Attorney liable for.*—The attorney who engages the service of the bailiff, and not the client, is the party liable to the bailiff for the fees usually allowed on taxation for the execu-

tion of process. *Walbank v. Quarterman*, 2 C. B. 94.

#### BILL OF COSTS.

*Must show in what court the business was done.*—An attorney's bill of costs for common law business, delivered under the stat. 6 & 7 Vict. c. 73, must show in what court the business was done. *Engleheart v. Moore*, 16 M. & W. 548.

Case cited in the judgment: *Lewis v. Primrose*, 6 Q. B. 265.

#### DELIVERY OF BILLS.

To assumpsit for work and labour, defendant pleaded, that the plaintiff was an attorney of Queen's Bench, and that the work was done by him in that character since stat. 6 & 7 Vict. c. 73, and that no bill had been delivered or sent, according to the statute, before action brought.

Replication, *de injuriâ*.

Held, bad, on special demurrer. *Simons v. Lloyd*, 7 Q. B. 402.

#### LIABILITY.

*Attorney of another court.*—*Semble*, the court

has power to enforce the performance by an attorney of an undertaking given by him as attorney in a cause in this court, though he be not an attorney on the roll of this court. *Thompson v. Gordon*, 15 M. & W. 610.

## LIEN.

*Production of papers.*—It is no answer to a motion for the production of documents, to show that the party is a bankrupt, and that the documents are in the possession of his solicitor, who claims a lien upon them for costs.—*Rodich v. Gandell*, 34 L. O. 228.

## LIEN OF CONVEYANCER.

A certificated conveyancer has no lien for his charges upon deeds delivered to him, "with and in respect of" which he does certain business for the owner of the deeds. *Steadman v. Hockley*, 15 M. & W. 553.

Case cited in the judgment: *Bleaden v. Hancock*, 4 C. & P. 152. \*

## MISCONDUCT.

In an action on a bill of exchange, where it appeared that the attorney for the defendant had attempted to suborn a witness to commit perjury in giving testimony that the bill was given for a gambling debt, the court made a rule absolute for the attorney to be struck off

the roll. *Wood v. Lord Portarlington, in re Macey*, 34 L. O. 328. See p. 10, ante.

## PRIVILEGE FROM ARREST.

An obvious deviation from the direct route, unexplained at the time of being taken into custody, will deprive a solicitor of his privilege of freedom from arrest whilst returning home from the court in which he has been engaged in the suit of his client. *Re Nias*, 34 L. O. 227.

## UNDERTAKING TO PAY COSTS.

The attorney for a defendant in a cause in this court, signed an undertaking, whereby, in consideration of the plaintiff's agreeing to suspend execution on the judgment, he undertook to make an arrangement with him respecting the payment of the debt and costs, prior to the defendant's being discharged from prison on other detainers; or, in the event of the plaintiff's not agreeing to the terms offered, to inform him in sufficient time of the defendant's intended discharge, so that the plaintiff might not be deprived of his power of lodging a detainer against him: *Held*, that this was not such an undertaking as the court would enforce summarily, inasmuch as they could not measure the damages sustained by the non-performance of it. *Thompson v. Gordon*, 15 M. & W. 610.

## BUSINESS OF THE COURTS.

## NISI PRIUS CAUSE LISTS.

## Eschequer.

## Middlesex.

## REMANETS FROM TRINITY TERM.

|                     |                                      |                          |                         |
|---------------------|--------------------------------------|--------------------------|-------------------------|
| Gregory, F. and Co. | Stevens                              | S. J. Keating            | Ca. Taylor and C.       |
| Oliverson and Co.   | Doe dem. Peacock                     | S. J. Frere              | Est. Vizard and Co.     |
| W. and H. P. Sharp  | Vignolles                            | S. J. Park               | Pro. Norris and Co.     |
| J. Taylor           | Weiss                                | S. J. Lumley             | Pro. E. Jennings        |
| Wright and K.       | The Mayor of Rochester<br>and others | S. J. Lee                | Issue, Wilson           |
| Jaques and Co.      | Hervey                               | S. J. Arden              | Pro. Ogle and Y.        |
| Sangster            | Brooks                               | S. J. Atkinson           | Pro. Allan and Co.      |
| Everest and Co.     | White                                | Wright                   | Pro. Mawe               |
| J. G. Reynell       | Reynell                              | S. J. Lewis              | Dt. Gregory, F. and Co. |
| Burbidge            | Kemp                                 | S. J. Lord Ingestre      | Pro. Sladen             |
| Everest and Co.     | Duke, knt., and others               | Ablett and others        | Pro. Rushbury           |
| R. Comyn            | Gillott                              | Burrell                  | Ca. J. Wright           |
| Gell and H.         | Fisher                               | Bradley                  | Dt. Sudlow and Co.      |
| W. Moss             | Kershaw                              | Bailey                   | Ca. Rd. Perkins         |
| J. T. Cookney       | Coates                               | Stevenson                | Pro. Westmacott and Co. |
| Wilson              | Dawson                               | S. J. Potchett           | Pro. Bush and M.        |
| Hy. Lewin           | Price                                | Maddox                   | Pro. H. Wickens         |
| Mead                | Coulson, pauper                      | S. J. Benson and another | Dt. Hill and S.         |
| E. Lewis            | Gadderer                             | S. J. Haine              | Pro. Deene and Co.      |
| E. Govett           | Simmons                              | Payne                    | Pro. Steele             |
| Thomas and M.       | Kerl                                 | S. J. Johnson            | Pro. Phillips and J.    |
| Willoughby and J.   | Steadman                             | Moore                    | Tres. Morris and Co.    |
| Wright and K.       | Watts                                | S. J. Clarkson           | Pro. Pontifex and M.    |
| Fennell and Co.     | Brent                                | S. J. Hughes, &c.        | Dt. Burrell and Son     |
| M. Lewis            | French                               | Bliss                    | Issue, In person        |
| De Medina           | Smee                                 | Edwards                  | Pro. Humphreys          |
| Champion            | Dyer                                 | Green                    | Issue, Smith and Co.    |
| G. Hume             | Rickards                             | Lee                      | Dt. Williamson          |
| J. B. May           | Saltner                              | Williams                 | Pro. Futvoye and Co.    |
| T. M. Thompson      | Ewart                                | S. J. Eagle              | Pro. Bisgood            |
| Douglas             | Virtue                               | Ibbinson                 | Pro. Pyke               |
| Jackson and Co.     | Knowles                              | Curtis                   | Pro. Depree             |
| Yallop              | Hearne                               | Beaston                  | Pro. Hayton             |
| Sadbroke            | Atwood                               | Hingley and another      | Pro. G. Vincent         |

|                       |                   |  |                        |
|-----------------------|-------------------|--|------------------------|
| Chappell <sup>e</sup> | Morley            | Attinborough                                 | Pro. Johnston          |
| Everill               | Heale and another | S. J. Heward                                 | Issue,* Raw            |
| Mills                 | Crowe             | Kent and another, exors.                     | Pro. Woolley           |
| Ivimey                | Hammond           | S. J. Green                                  | Pro. Bisgood           |
| Sewton                | Penfold           | Budding and others ex-<br>ecutrix and exors. | Dt. Hunt and L.        |
| J. Lewis              | Alexander         | Wiggins                                      | Pro. T. Roberts        |
| J. and T. Gole        | Harris and ux.    | Lawrence                                     | Covt. Wakeling         |
| S. Pile               | Pidder            | Mercer                                       | Trea. Taylor           |
| Howard and Son        | Brown             | Hickmott                                     | Ca. Morris and Co.     |
| Same                  | Egerton           | Same   | Ca. Same               |
| H. J. Turner          | Dust              | Geale  | Tres. Casley           |
| Same                  | Turner            | Hughes                                       | Dt. Masterman          |
| Rhodes and L.         | Turner and others | Brown  | Pro. W. & E. Dyne      |
| J. Mills              | Meyger            | Saxton and another                           | Ca. Monkhouse          |
| Willoughby and J.     | Baker             | Tomlins                                      | Pro. Garry             |
| Same                  | Fownes            | Bolden                                       | Pro. Bickley           |
| E. Lambert            | Marshall, admix.  | Cockburn and another                         | Pro. Turner            |
| G. Lewis              | Palmer            | Delehay and another                          | Tres. Dale             |
| Greaves               | Greaves           | S. J. De Vear and another                    | Pro. Walton & M. Coode |
| Same                  | Sait              | Allen  | Ca. Robinsons [ & Co.  |
| Cook and 'S.          | Jackson           | Broughton                                    | Dt. Parsons            |

## Queen's Bench.

## London.

|                   |   |  |   |
|-------------------|---|--|---|
| D. Richardson     | Mackay (Inj.)                           | Brooke   | Tres. Baxendale and Co.   |
| Capes and S.      | Blackmore (Inj.)                        | Burton and others, execu-<br>tors, &c.                 | Dt. Alban and B.  |
| Keene             | Dean (stayed)                           | S. J. Grace  | Dt. Smith   |
| Vincent and S.    | Franklin & another (stay-<br>ed)        | S. J. Davis and others                                 | Covt. Wm. Bevan   |
| Lewis and S.      | Brand (stayed)                          | Harper   | Dt. Wilde and Co.   |
| W. H. Green       | Bond (Inj.)                             | S. J. Stanley  | Prom. Few and Co.   |
| Phillips          | Hartley & another (stayed)              | Manton   | Van Sandau & Co.  |
| Pearce and Co.*   | Robertson (stayed)                      | S. J. Dargan   | Covt. Norris and Son  |
| C. B. Wilson      | Gibbs (stayed)                          | Aberdeen   | Covt. Gilbert, Hook, & Co.  |
| Oliverson and Co. | Soares                                  | S. J. Glyn, Bart., and others                          | Pro. E. and J. Lawford  |
| Amory and Co.     | Travers and another                     | Straker and others                                     | Pro. Dean and Co.   |
| Jordeson          | Cundell (stayed)                        | Harrison and others                                    | Pro. Chester and Co.  |
| Hughes, K. and M. | Berkley                                 | De Vear, sued, &c.                                     | Pro. Condell  |
| C. Young          | Newton and another                      | S. J. Hyde, jun.                                       | Proms. Soles and T.   |
| Sole and T.       | Belcher and others, assign-<br>ees, &c. | S. J. Renshaw  | Tilleard and Co.  |
| Hook              | Conyngham, Esq., and<br>others          | S. J. Macgregor  | Prom. Fearon and C.   |
| Bailey and B.     | Bailey and another                      | S. J. Critchley  | Proms. Milne and Co.  |
| Same              | Same                                    | S. J. Sharp  | Proms. Same   |
| William Batty     | English                                 | S. J. Hales  | Trov. Wright and K.   |
| A. Digby          | Cole                                    | S. J. Forbes and others                                | Proms. Tatham and Co.   |
| Stevens and Co.   | Borrer                                  | S. J. Brighton, Lewes, & Hast-<br>ings Railway Company | Sutton and Co.  |
| Lawford           | The Queen                               | S. J. Charretie and another, in-<br>dicted with others | Indt. Keddell and Co. for<br>Charretie, Fry & Co.<br>for Young, Bart.           |
| Wyche             | Lowe                                    | S. J. Penn   | Ca. Cathams and F.  |
| Lawford           | The Queen                               | S. J. Charretie and another, in-<br>dicted with others | Indt. Fry and Co. for Char-<br>retie, Keddell and Co.<br>for deft. Sir W. Young |
| Amory and Co.     | Waley                                   | S. J. Idle   | Pro. Richardson and Co.   |
| Same              | Shewell and another                     | S. J. Brown  | Pro. Venning and Co.  |
| Same              | Taylor, P. O.                           | S. J. Black  | Prom. Ashurst and Son   |
| Sutcliffe         | Trimen                                  | S. J. De Burgh   | Pro. Brundrett and Co.  |
| W. W. Oldershaw   | Bennett                                 | Thompson   | Prom. Hook  |
| Cox and S.        | Alcock                                  | S. J. Corporation of the Royal<br>Exchange Assurance   | Dt. I. C. and H. Fresh-<br>field  |
| Roy and Co.       | Bosaquet, pub. officer                  | S. J. Maclean  | Pro. Cardale and Co.  |
| King and B.       | Falkner                                 | S. J. Waller   | Tro. C. Pearson   |
| Gell and H.       | Dickinson                               | S. J. Bradley  | Pro. Sudlow and Co.   |
| Fry and Co.       | Forrest                                 | ter  | Dt. Stevens and Co.   |
| Hughes and Co.    | Clements                                | ly   | Ca. Taylor  |

|                         |                                  |  |   |
|-------------------------|----------------------------------|--|---|
| A. Boucher              | Mitchell                         | S. J. Chard                            | Dt. Valance and N.                              |
| C. Walton               | Walker and others                | S. J. Flint                            | Pro. Hitchison                                  |
| G. W. F. Cook           | Stocker                          | S. J. Betts                            | Ca. Robinson and Co.                            |
| White and B.            | The Queen                        | S. J. Ferrand, Esq.                    | Crim. Infm. A. Dobie                            |
| Warter                  | Sherlock and another             | S. J. Spiers                           | Pro. Tatham                                     |
| Same                    | Same                             | S. J. Brown                            | Pro. Campbell and W.                            |
| Elmslie and P.          | Stevens                          | S. J. Green                            | Pro. Elderton                                   |
| Hodgson and B.          | Watson                           | S. J. Earl of Charlemont and<br>others | Pro. Ogle and Y.                                |
| Lethbridge and M.       | Spicer                           | Baxendale and others                   | Ca. Tatham and Co.                              |
| Blundell                | Drana                            | S. J. Lee                              | Pro. Surr and G.                                |
| Oldershaw               | Dawson and others                | S. J. Hay                              | Pro. Capes and Stuart                           |
| Sutcliffe               | Trimen                           | S. J. Vist. Curzen                     | Pro. Keane                                      |
| Hughes, K. and M.       | Berkley and another              | S. J. Gibbons                          | Dt. Bennett                                     |
| Tanner                  | Gibson                           | S. J. Black and Weiss                  | Hindman and H. for Black,<br>Whitcomb for Weiss |
| Marson and D.           | Universal Salvage Com-<br>pany   | S. J. Winthorp                         | Dt. Elderton                                    |
| Same                    | Same                             | S. J. Norcott                          | Dt. Same  |
| Jackson and J.          | Costello                         | S. J. Wakley                           | Ca. Potter and Son.                             |
| Marson and D.           | The Universal Salvage<br>Company | Jones                                  | Dt. Paxton                                      |
| Burrell and Son.        | Goldzicher                       | Wolff                                  | Ca. Watson and Co.                              |
| Watson                  | Everett                          | Sto <del>ck</del> and another          | Pro. Lloyd and France                           |
| Tate                    | Atkinson                         | Clements                               | Pro. Haghes and Co.                             |
| Same                    | Same                             | Lyne                                   | Pro. Same                                       |
| Wathen                  | Wathen                           | Vaughan                                | Dt. Young and W.                                |
| Philp                   | Coleman                          | Humphryes                              | Pro. E. Lewis                                   |
| J. C. and H. Freshfield | Storm and others                 | S. J. Guimariens and others            | Pro. Simpson and C.                             |
| Horwood and G.          | Horwood and another              | S. J. Barlow                           | Pro. Bolding and P.                             |
| Bischoff and C.         | Clegg                            | S. J. Shaw                             | Dt. J. H. F. Lewis                              |
| W. H. Walsh             | Bray                             | Roberts                                | Ca. E. Isaacs                                   |
| Waller                  | Jackson                          | Collins                                | Pro. Fennell and Co.                            |
| Lewis and L.            | Bunn                             | S. J. Lind                             | Pro. Jennings                                   |
| In person               | Amos                             | Chapman                                | Dt. Wheatley                                    |
| Burrell and Son.        | Hooper                           | S. J. Cumberlege                       | Pro. Jaques and E.                              |
| In person               | Cook                             | Sharpley                               | Campbell  |
| In person               | Same                             | Bryant                                 | Rushworthy                                      |
| G. F. Hudgson           | Burton                           | S. J. Reynolds                         | Pro. Mayhew and Co.                             |
| Skinner                 | Thompson                         | Blurton and others                     | Pro. Burgess for Blurton—<br>Lane for Thorney   |
| Atkinson                | Harris, (a pauper)               | Williams                               | Tres. Theobald                                  |
| Elmslie and P.          | Cunop and another                | Levy                                   | Pro. Randall                                    |
| Same                    | Elmslie and others               | S. J. Keily                            | Dt. Amory and Co.                               |
| H. F. Richardson        | Greig                            | Holding                                | Dt. In person                                   |
| Grimaldi and Co.        | Ralph and another                | S. J. Carter                           | Dt. Stevens and Co.                             |
| Weston and Son          | Molloy and another               | Brown                                  | Covt. Colley                                    |
| C. and H. Hyde          | Doe dem. Shaw                    | Shaw                                   | Ejt. W. Smith                                   |
| Dolman and S.           | Lawes                            | White and another                      | Dt. and Det. Lambert                            |
| W. H. Warton            | Norman                           | Martin                                 | Ca. Dryden                                      |
| Few and Co.             | Pancroft                         | S. J. Lawless                          | Pro. D. Keene                                   |
| Dassett                 | Coulson                          | Lewis                                  | Dt. Adams                                       |
| Bush and M.             | Mann                             | S. J. Herve                            | Pro. In person                                  |
| Webster                 | Laurie, Kut., and others         | Bendall                                | Asst. Tippetts                                  |
| Jones, B. and J.        | Charles                          | Pavie                                  | Dt. Baylis and D.                               |
| Wright and B.           | Doe several dems. Hund-<br>ley   | S. J. Poynter                          | Tres. and Ejt. Hutchinson                       |
| A. J. Lane              | Robins                           | Edwards                                | Dt. Lewis                                       |
| H. Codd                 | Small                            | Reeve                                  | Dt. Wealand B.                                  |
| John Bell               | Simpson                          | Howard                                 | Dt. Amory and Co.                               |
| Dickson and O.          | Hewitt                           | S. J. Christie                         | Pro. Baxter and Co.                             |
| Few and Co.             | Bett                             | S. J. Thomson                          | Thomas and M.                                   |
| H. T. Ashley            | Freeman                          | Batley                                 | Dt. Billing                                     |
| Theobald                | Collard                          | Lea                                    | Pro. Pimero                                     |
| G. Ashley               | Isaac                            | Higgins and another                    | Pro. Smith and Co.                              |
| Hobler                  | Whitfield, by her next<br>friend | Whitfield                              | Ca. Randall                                     |
| Champion and B.         | Cotton and another               | Swan                                   | Pro. Downes, G. and S.                          |
| Bushbury                | Raymond                          | Trigg                                  | Pro. Valance and V.                             |
| Amory and Co.           | Stovin                           | Wright                                 | Pro. Tison, S. and Co.                          |
| Rushworth               | Barnett                          | Marshall                               | Pro. Kearns                                     |
| Champion and B.         | Cotton                           | Mills                                  | Pro. Rushbury                                   |
| G. Ashley               | Pridmore                         | S. J. Ward                             | Pro. Elmslie and P.                             |
| Marson and D.           | Wilkins                          | Wood                                   | Dt. D. Keane                                    |
| F. Drake                | Tucker.                          | Dobson                                 | Dt. Van Sandau and Co.                          |

|                  |                           |                         |                         |
|------------------|---------------------------|-------------------------|-------------------------|
| In person        | Beart                     | Simpson                 | Dt. Kingdom and S.      |
| Starling         | Higham                    | Brooks                  | Dt. Hallett             |
| R. B. Chambers   | Pledger, admix.           | Lock                    | Pro. Chauntler and W.   |
| Cox and S.       | Roberts and another, S.J. | Ridgway                 | Tro. Sharpe, F. and Co. |
| W. and E. Dyne   | Minniss]                  | Turner                  | Tro. Rhodes and L.      |
| Hughes, K. & M.  | Berkley                   | Kemp                    | Pro. Chilcote           |
| Frankham and D.  | Boutell and another       | Harrison                | Dt. Dickson and O.      |
| Paterson and Son | Barton                    | O'Brien                 | Pro. G. S. Ford         |
| John Lee Jones   | Cheeseman and another     | Hart                    | Tro. Tilson and Co.     |
| T. H. Cook       | Hubbard                   | Tanner                  | Dt. Person              |
| Pritcher         | Denenlain                 | Marchioness of Conyghar |                         |

## Common Pleas.

|                       |  |  |                         |
|-----------------------|--|--|-------------------------|
| Oliverson and Co.     | Bayley   | S. J. Hill   | Prom. R. Ellis          |
| J. Hodgson            | Stocker  | S. J. Gull   | Dt. Marten and Co.      |
| Wire and Child        | Tibaldi  | S. J. Wanless  | Ca. James Taylor        |
| Bevan and G.          | Backhouse and others   | Maitland   | Prom. Loaden            |
| Lofty, Potter, and S. | Smart  | S. J. Allison  | Prom. Tilson and Co.    |
| Lofty, Potter, and S. | Bathyan  | S. J. Wellit   | Ca. Coverdale and Lee   |
| Cattarns and Fry      | Brown  | S. J. Chapman  | Prom. W. W. & R. Wren   |
| Wire and Child        | King and another   | Black  | Dt. Bevan and G.        |
| Freeman and Co.       | Bessie, admor., &c.  | S. J. Dresden  | Tres. Crowder and M.    |
| Hornby and Co.        | Pilbrow  | S. J. Pilbrow's Atmospheric Railway Co.                    | Cov. White and Borrett  |
|                       |  | S. J. Sharp and another                                    | Prom. Van Sandau & Co.  |
| Druce and Sons        | Schwartz   | S. J. Pilbrow  | Cov. Hornby and T.      |
| White and Borrett     | Pilbrow's Atmospheric Railway Co.  | S. J. The Peninsular and Oriental Steam Navigation Company | Ca. McLeod and S.       |
| Barton                | Bennett, Esq.  | S. J. Emery and another                                    | Ca. Ivemy               |
|                       |  | Laws   | Dt. Wright and B.       |
|                       |  | Cash   | Ca. Chappell            |
| A. Jones              | Richardson and another, assignees  | S. J. The London, Brighton, & South East Coast Railway     | Ca. Sutton and Co.      |
| Shearman and Son      | Finnis and another   |  |                         |
| Wire and Child        | Malcomson  |  |                         |
| Bevan and Goodeve     | Richards   |  |                         |
|                       |  |  |                         |
| C. Pearson            | The Society of the Governor, Assistants, London, of the New Plantation in Ulster &c. | S. J. Tyrell   | Prom. In person         |
| Vallance and B.       | Groom and others, assignees, &c.   | S. J. Hutton and others                                    | Trov. Linklater         |
| Devey                 | Egg  | S. J. Lumley   | Ed. Jennings            |
| Robt. Hare            | Greville   | S. J. Abitbol  | Prom. Davis             |
| Mardon and P.         | Maund and others   | S. J. Baxendale and others                                 | Ca. Tatham and Co.      |
| Bevan and Goodeve     | Moorsom  | S. J. Wilshire   | Dt. Wilkinson and R.    |
| J. M. Minter          | Tassell  | S. J. Cooper   | Dt. Same                |
| Same                  | Same   | S. J. Same   | Ca. Same                |
| W. Melton             | Turner   | S. J. Hamilton   | Dt. Hill                |
| Wyche                 | Davis and others   | S. J. Malcomsen  | Ca. Simpson and Cobb.   |
| C. W. & C. H. Lovell  | Pinkus   | S. J. London & Croydon Railway Co.                         | Ca. Burchell and Co.    |
|                       |  |  | Ca. Gatty and Turner    |
| J. H. Turner          | Coultas  | S. J. Bowes  | Prom. Cox and Stone     |
| C. Jordonson          | Morton and others  | S. J. Fletcher   | Dt. Vallance and Co.    |
| Thompson              | Farrow   | Martin   | Prom. Sutton and Co.    |
| Desborough and Young  | Swaby  | S. J. Sutton, jun.   | Prom. Guillaume         |
| Hill and Heald        | Hainstock  | Grossmith  | Ca. Wire and Child      |
| N. Bennett            | Russell  | Bryant   | Prom. Rickards and W.   |
| E. Fuller             | Lurchen  | S. J. Mytton   | Prom. H. R. Hill        |
| Chamberlayne and M.   | Smith  | S. J. Walker   | Prom. Cox and Stone     |
| Minet and Smith       | Brooks and another   | Lloyd and others   | Dt. Dangerfield         |
| Cattarns and Fry      | Cattarns and another   | Smith  | Prom. H. E. Bailey      |
| J. S. Bowden          | Rice   | S. J. Maitland   | Prom. T. and G. Everill |
| Finch and S.          | Williams   | S. J. James and another                                    | Dt. W. B. James         |
| Same                  | Crane  | Browne   | Dt. F. W. Pike          |
| Patten                | Gillingham   | S. J. Montefiore   | Dt. E. M. Elderton      |
| Chamberlayne and M.   | Shaw   | Palmer   | Prom. Overton and H.    |
| Surr and Gribble      | Mullins  | S. J. Pace   | J. Nixon                |
| Parnter and F.        | Birkett and others   | Shove  | Iss. Bristow and T.     |
| Sutton and Co.        | Pearce   | Wiles  | Trov. Howell            |
| J. & J. H. Linklater  | Huton and others   |  |                         |

|                      |   |                                      |                         |
|----------------------|---|--------------------------------------|-------------------------|
| J. & J. H. Linklater | Messer                                  | Booth                                | Dt. T. Browning         |
| Same                 | Brodie                                  | Petley and others                    | Dt. Maples and Co.      |
| A. J. Lane           | Collard                                 | Bradley                              | Dt. Fesenmayer          |
| Same                 | Crowther                                | Solomons                             | Trov. Van Sandau & Co.  |
| Collins and R.       | Payne                                   | Payne                                | Dt. Paterson            |
| Townshend and S.     | Ayliffe                                 | Harris                               | Dt. R. Hare             |
| Lawrence and Plewes  | Groom and others, assignees             | S. J. Bird and another               | Trov. Kirk              |
| Oliverson and Co.    | Burton                                  | Crass                                | Prom. Bayliss and Drew  |
| Overton and Hughes   | Overton and another                     | Conquest                             | Dt. Nokes               |
| Marten and Co.       | Smart and another                       | Gillies and another                  | Prom. Druce and Sons    |
| Chamberlayne and M.  | Shaw                                    | Holmes                               | Dt. E. Willan           |
| Same                 | W. Doyle                                | Rossie                               | Dt. Surr and Gribble    |
| Same                 | Shaw                                    | S. J. Winthrop                       | Dt. E. M. Elderton      |
| Barber               | Lamb                                    | Cloves and others                    | Ca. Hughes and Co.      |
| Finch and S.         | Williams                                | S. J. Bettridge                      | Ca. T. G. Everill       |
| W. H. Warton         | Bliss                                   | Leaker                               | Dt. W. Hudson           |
| Same                 | Wilkinson                               | Hands                                | Prom. Wilkinson and R.  |
| Sutton and Co.       | Cooke                                   | Meyer                                | Prom. Richards          |
| Marten and Co.       | Radman                                  | Ionides                              | Prom. Oliverson and Co. |
| Young and H.         | Pyke                                    | Harvey                               | Mayhew and Co.          |
| Cattlin              | Barker                                  | S. J. Beauclerk                      | Prom. Parkes and Co.    |
| Same                 | Collyer                                 | S. J. Same                           | Dt. Same                |
| E. Isaacs            | Woolfield                               | S. J. Scard                          | Prom. Miller and Carr   |
| H. Chester and Son   | Forest                                  | Carter, Esq.                         | Dt. Stevens and G.      |
| Maples and Co.       | Fletcher                                | S. J. Count de Torre Dias and others | Prom. Lawfords          |
| Amory and Co.        | Elster and another                      | Mathieson                            | Prom. Keddell and Co.   |
| Cotterell            | Navone                                  | S. J. Haddon and another             | Cov. Johnson F. and L.  |
| Same                 | Devaux and another                      | S. J. Connolly                       | Prom. Maples and Co.    |
| J. Biggenden         | Cheeseman                               | Fooks                                | Prom. Combe             |
| W. Smith             | Martin                                  | Peacock                              | Ca. H. Martineau        |
| J. M. Thompson       | Swain                                   | Seeley                               | Prom. J. and S. Langham |
| Roy and Co.          | Whitehaven and Furness Junction Railway | Glover                               | Dt. Gregory and Co.     |
| J. D. Williams       | Sbarland                                | Leifchild                            | Prom. Bigg, C. and L.   |
| G. Rutherford        | Grissell and another                    | James                                | Prom. Hook              |
| Sadgrove             | Hallett                                 | Lumley                               | Ca. Shoubridge and B.   |
| Venning and Co.      | Stuart                                  | Cox                                  | Prom. Davies and D.     |

**Cyrcquer.**

|                     |                       |                         |                        |
|---------------------|-----------------------|-------------------------|------------------------|
| Dampier             | Hughes                | S. J. Ward, Esq.        | Pro. Elmslie and P.    |
| Oliverson and Co.   | Oliverson and another | S. J. Sunly             | Pro. Walton            |
| Maples and Co.      | Bell                  | S. J. Jenkyns           | Pro. Bartholomew       |
| Tatham and Co.      | Fenn                  | S. J. Gould and another | Pro. Bischoff and C.   |
| Crowder and M.      | Gibb                  | S. J. Marshall          | Pro. Wilde and Co.     |
| Devonshire and W.   | Whithead, jun.        | S. J. Stephenson        | Pro. Parkes            |
| Young and Son       | Wearing               | S. J. Bradbury          | Pro. Wright and Co.    |
| Swann               | Conway                | M'Donough               | Pro. Chaplin           |
| Nicholson and P.    | Pinto and another     | S. J. Lingham           | Dt. W. B. Jones        |
| Terrell             | Prichard              | S. J. Weiss             | Dt. Whitcomb           |
| Crowder and M.      | Tarte                 | S. J. Barnes            | Pro. Young, V. and Co. |
| W. Murray           | Fox and others        | S. J. Rigby and another | Dt. Nelson and Co.     |
| Hicks               | Rylands, jun.         | S. J. Small and others  | Pro. Maples and Co.    |
| C. Walton           | Dewitte               | S. J. Stanway           | Pro. Ford              |
| Colley              | Chapman and others    | S. J. Leaf              | Pro. Lloyd             |
| W. F. Walker        | Atkinson              | S. J. Hockock           | Pro. Cattarns and F.   |
| White and Co.       | Edwards               | Hillier                 | Ca. Cook and S.        |
| In person           | Vane                  | S. J. Cobbold           | Pro. Wilkinson and Co. |
| Braham              | Law                   | Dodd                    | Dres. Vann             |
| C. Wilson           | Chew                  | Jones                   | Pro. L. H. Braham      |
| Gregory, F. and Co. | Yearsley              | Moore                   | Pro. Langley and Y.    |
| E. Smith            | Prichard              | S. J. Hughes            | Pro. Burrell and Son   |
| Finch and Co.       | Witty and another     | Martin and another      | Dt. Fielder and Co.    |
| H. Lloyd            | Brady                 | Howe, sued &c., and an. | Tres. Kingdom and S.   |
| Hodgson             | Milbank               | Harvey                  | Dt. Mawe               |
| Braham              | Solomon               | S. J. Gurney            | Pro. Pearce and Co.    |
| In person           | Herring               | S. J. Hudson and others | Tres. Muggison and Co. |
| Gardon and Son      | Gillispie and others  | S. J. Baldwin, M. P.    | Dt. R. H. Hill         |
| Seaman              | Goodyear              | Harris                  | Pro. Begbie            |
| In person           | Harris                | Tynte                   | Pro. Baker and Co.     |
| Scargill            | Fox                   | Webster                 | Pro. Bowden            |



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| Van Sandau and Co.    | Wiley                                     | S. J. Parratt and others                   | Pro. Pontifex and Co.          |
| Same                  | Norton                                    | S. J. Robinson and another                 | Pro. Few and M.                |
| Syer                  | Myers                                     | Wadsworth and another                      | Dt. Sudlow and Co.             |
| J. D. Williams        | Aston                                     | Paterson                                   | Pro. Tripp                     |
| Pain and H.           | Green and others, assignees, &c.          | S. J. Hall, Bart.                          | Dt. Clarke and D.              |
| Walker                | Gosden                                    | S. J. Pocock                               | Pro. Cattarns and F.           |
| Everest and Co.       | Duke, Knt., and another                   | S. J. Cox                                  | Pro. Hudson                    |
| H. Lloyd              | Leaf and others                           | Hunt                                       | Dt. Cragg and J.               |
| J. and S. Langham     | Grace                                     | Armitt, sued, &c.                          | Dt. Gladstone                  |
| E. Govett             | Macarthur                                 | Hawkins                                    | Ca. Dennis                     |
| T. Tyrrell            | M'Intosh                                  | S. J. The Midland Counties Railway Company | Covt. Smith and Co.            |
| Pontifex and M.       | Dawson and others                         | Duppa                                      | Pro. Thorndike                 |
| Tatham and Co.        | Barker                                    | S. J. Bruce                                | Pro. Goatly                    |
| Wilkinson and R.      | Tootell                                   | S. J. Frewen                               | Pro. Smith and Son             |
| Same                  | Cooper, Esq. (P. O.)                      | A. Rickman                                 | Pro. Watson                    |
| Same                  | Same                                      | S. Rickman                                 | Pro. Rickards and W.           |
| Sharpe and Co.        | Hardcastle (P. O.)                        | Lewin and another                          | Pro. J. Hughes                 |
| M'Leod and S.         | Nisbitt and others                        | Wedd                                       | Pro. Hilleary                  |
| Same                  | Gould and others                          | Same                                       | Pro. Same                      |
| Same                  | Conolan                                   | Fletcher                                   | Pro. J. L. Jones               |
| Same                  | Russell                                   | S. J. Booker                               | Pro. Leigh                     |
| Horsley               | Worster                                   | Harper                                     | Dt. Linklaters                 |
| Hill and E.           | Courtenay                                 | Archbold                                   | Dt. Leigh                      |
| Scott and T.          | Wood                                      | Lyne                                       | Pro. C. and H. Hyde            |
| J. B. May             | Roberts                                   | Carmichael                                 | Pro. Sharpe and Co.            |
| Same                  | Bousfield                                 | Edge                                       | Pro. Steadman and P.           |
| Donne and T.          | Machin                                    | S. J. London and South Western Railway Co. | Ca. Gadsden and F.             |
| Same                  | Cotton                                    | Houghton                                   | Dt. Wright and J.              |
| W. Moss               | Brown (P. O.)                             | Ogden and others                           | Pro. Meggison & Co.—J. [Nixon] |
| Miller and Carr       | Egan and another                          | S. J. Jonides and another                  | Pro. Oliverson and Co.         |
| Paxon                 | Daines and another                        | S. J. Hartley                              | Ca. Crosby and Co.             |
| Capes and S.          | Morris                                    | Duke, Knt., and others                     | Pro. Everest and Co.           |
| Same                  | Fleet                                     | Same                                       | Pro. Same                      |
| Same                  | Black                                     | Humphrey                                   | Pro. Pilcher                   |
| Bell and Co.          | Stevens and others                        | Guillaume                                  | Pro. Guillaume                 |
| Keane                 | Connop                                    | Challis and another                        | Ca. Kilgour and P.             |
| E. J. Sydney          | Chesnay                                   | Olive                                      | Pro. H. H. Burder              |
| Johnston, F., and Co. | The Newry and Enniskillen Railway Company | Holdich                                    | Dt. Morris, S., and Co.        |
| Simpson and Co.       | Vandar Menlen                             | Martin                                     | Pro. S. Smith                  |
| Dawes and Sons        | Whytock and another                       | S. J. Lapworth                             | Pro. King and A.               |
| Roy and Co.           | Corlet                                    | Wallbancke                                 | Pro. W. B. James               |
| Southgate             | Southgate                                 | Lake                                       | Dt. Ashley                     |
| W. W. Fisher          | Bailey and another                        | Hemmens                                    | Dt. In person                  |
| Pearce and Co.        | Santivanes                                | Da Silva                                   | Pro. Freeman and Co.           |
| H. R. Hill            | Brown                                     | Staines                                    | Pro. Mayhew and Co.            |
| Harrison              | Clark                                     | S. J. Newsam                               | Tres. Oliverson and Co.        |
| T. J. Horwood         | Vine                                      | S. J. Sir J. E. Anderson & anr.            | Pro. Wire and C.               |
| Dobinson              | Finch                                     | S. J. Tyerman                              | Pro. Fennell and Co.           |
| Brubam                | Jones                                     | Chew                                       | Pro. Wilson                    |
| Cutler                | Bennett and another                       | York                                       | Pro. Galsworthy and A.         |
| Kell and C.           | Chaffers                                  | S. J. Pink                                 | Pro. Sawyer                    |
| Bolding and P.        | Forbes                                    | Holmes                                     | Dt. H. R. Hill                 |
| Same                  | Same                                      | Boucher                                    | Dt. Same                       |
| Dodd and Co.          | Castrique                                 | Carter                                     | Pro. Galsworthy                |
| Same                  | Same                                      | Ollive                                     | Ca. Burder                     |
| Jones                 | Jones                                     | Rawlinson                                  | Pro. Philp                     |
| Crosby and C.         | Cook and others                           | Nelson                                     | Dt. Nettleship                 |
| Bell and Co.          | Shuttleworth and another                  | Barker                                     | Dt. Meggison and Co.           |
| H. Lloyd              | Owen                                      | Cochett                                    | Pro. A. Jones.                 |
| M'Duff                | Spurrier                                  | Spurrier                                   | Tres. J. Wilkin                |
| J. H. Taylor          | Hotson                                    | Dixon                                      | Dt. Bogkett                    |
| Stretton              | Bartlett                                  | S. J. Gee and others                       | Ca. Brook                      |
| T. B. Hudson          | Erlam                                     | Hume                                       | Dt. G. W. Marsden              |
| Willoughby and J.     | Peel                                      | Faulkner and others                        | Dt. Roberts — Davis —          |
| Hornby and T.         | Rogers and others                         | Chilcote                                   | Pro. In person [Keene]         |
| Tatham and Co.        | Mowatt                                    | S. J. Thompson                             | Pro. Gordon and Son            |
| Same                  | Same                                      | S. J. Collett                              | Pro. Hook                      |
| Same                  | Hill                                      | S. J. Taff Vale Rail. Company              | Covt. Hunts                    |
| Gadsden and F.        | Seaman                                    | Tegg and another                           | Tres. Fry                      |
| Fisher and De J.      | Lancelott                                 | Bingley                                    | Dt. Wathen and P.              |

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 20, 1847.

—"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### ADMINISTRATION OF JUSTICE IN THE NEW COUNTY COURTS.

THOSE who have undertaken to defend and maintain the system established under the County Courts Act, are not likely to have a sinecure employment. The complainants are numerous, and begin to speak "trumpet tongued."

Extensive as is the jurisdiction conferred on the new courts by the statute, (9 & 10 Vict. c. 95,) it does not seem to satisfy those who preside in them. The 58th section expressly provides, that "the court shall not have cognizance of any action in ejectment, or in which the title to any corporeal or incorporeal hereditaments, or any toll, fair, market, or franchise, shall be in question; or in which the validity of any devise, bequest, or limitation, under any will or settlement, may be disputed." This limitation of the jurisdiction of the County Court may be traced to very ancient times. In Lord Coke's Commentary on the Statute of Gloucester (c. 8),<sup>a</sup> speaking of the jurisdiction of the sheriff in his County Court, he says, that he shall not hold plea of trespass for taking away charters of inheritance, because it concerns the freehold; and in a case in the Court of Common Pleas, very recently reported,<sup>b</sup> where the defendant in replevin made cognizance as the bailiff of A., and the plaintiff pleaded that the defendant was not the bailiff of A., it was expressly held, that after issue was joined on such plea, the subsequent proceedings in the County

Court were *coram non judice*, as the freehold *might* come in issue, and the effect would have been that the inferior court would have had to deal with a matter with which it was not competent to deal. The judges of the County Courts, however, have not always felt themselves restricted by the current of authorities to be found in the books from pronouncing judgment upon matters in respect of which the law presumes them to be ignorant, and the consequence is, that the Superior Courts have been called upon to grant prohibitions restraining them from proceeding in matters in which the title to land has been, or may be, put in issue.

The decisions of the County Court judges, as to the construction to be put upon the 63rd section, which enacts, that "it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in the said courts," is about to be brought directly under the consideration of the Court of Exchequer, upon a rule for a writ of prohibition. The facts submitted to the notice of the court in the application for this rule are so startling, and at the same time so instructive, that we copy an account of what passed in court from the *Morning Chronicle* of Monday last, in which we find the fullest report of the motion.

COURT OF EXCHEQUER, SATURDAY.

*Grimley v. Acroyd and another.*

Mr. Martin moved in this case for a rule to show cause why a writ of prohibition should not issue, directed to the judge of the Worcester County Court for the recovery of small

<sup>a</sup> 2 Inst. 310, 311.

<sup>b</sup> *Tinniswood v. Pattison*, 3 Com. Ben. 243.  
VOL. XXXV. No. 1,028.

debts, to stay all further proceedings, and to return into this court the plaint which had been heard before the learned judge in this case, upon the ground that the subject matter of the action was beyond the amount in reference to which the county court had jurisdiction. The learned counsel stated, that the defendants were railway contractors, and it was alleged by the plaintiff that they had given orders to supply the men who were engaged on the works with certain articles, and in this way the claim had arisen which was brought before the judge of the county court. This court would, perhaps, be astonished to hear that no less than 3,000 summonses either had issued or were about to issue from the county court, in respect of the debt claimed by the plaintiff from the defendants, and if all these summonses were proceeded with in the ordinary manner, the costs consequent upon them would amount to no smaller a sum than about 54,000*l.* The case that has been already heard in the court in question was for the recovery of 11*l.* 5*s.*, and upon which the costs were as much as 8*l.* 8*s.* 8*d.*

The *Lord Chief Baron* inquired, whether, even if the costs did amount to so large a sum as 8*l.* in each of the 3,000 actions commenced in the county court, the costs of a similar number of actions in the superior courts would not greatly exceed that amount?

Mr. *Martin* said, no doubt; but then, if if there chanced to be 3,000 actions brought, as these in question, in a common law court, the decision in one would decide the remaining 2,999. It seems that the case came on for trial on the 23rd of August. One of the defendants defended in person, and after having addressed the judge, proceeded to call two witnesses. The defendant (as was understood) was then himself submitted to an examination, after which there was a reply upon the part of the plaintiff, who in the end obtained a verdict. Now he should contend, that if the defendants were liable at all, they could only be liable to one action at the suit of the same plaintiff, seeing that whatever the order was, it was given at one time, and that on the 10th of July. On the 17th of September, the plaintiff took out 228 summonses against the defendants for an aggregate amount not exceeding 303*l.*, whilst the various sums of which the total was composed ranged from 5*s.* to less than 5*l.* each.

Mr. *Baron Alderson*: Some person or persons, then, it was clear, must make a pretty good sum out of such a course of proceeding, at all events.

Mr. *Baron Parke* remarked, that the question had undergone very considerable discussion out of doors, as to whether a large debt could be split into small sums, so as to bring them within the operation of the new act.

Mr. *Martin*: Supposing the defendants were liable for the debt, it was manifest there had been but one order given by them, and it was scarcely possible to conceive for one moment that the legislature could ever have intended, that a debt arising out of one single order might be divided and split into 3,000

parts, and then that a separate action should be had in respect of each part.

Mr. *Baron Alderson* said, there was another thing too that was quite clear. The legislature never could have meant that a man should be allowed to be a witness in his own case when the debt amounted to 300*l.*

Mr. *Baron Parke* wished to know if he rightly understood that there was but one order given?

Mr. *Martin*: One order only—that was all.

Mr. *Baron Alderson* observed, that if this principle were to be admitted and to be carried out, an apothecary might bring a separate action against a patient for each ingredient of each pill that he might chance to send out in one pill-box [laughter].

The *Lord Chief Baron* said, that the learned counsel might take his rule; and then went on to add, that if such a course as had been described by the learned gentleman were to be permitted and pursued, it was quite clear that the act had been misnamed; for instead of its turning out to be, as was understood to have been its intention, an "Act for the more easy Recovery of Small Debts," it ought to have been entitled an "Act to Split Large Debts into Small Amounts, and for the purpose of Increasing Costs."

Rule granted accordingly.

We can scarcely conceive that the system disclosed upon this application would meet with the unqualified approval of even the most enthusiastic admirers of the new tribunals. If the reports which reach us from many quarters, however, are not totally unfounded, a misapprehension as to the nature or extent of their jurisdiction is not the most flagrant mistake committed by the County Court judges. In many instances, where the subject-matter is unquestionably within the jurisdiction of the County Courts, the decisions are marked by an independence—we might say a total disregard—of legal principles utterly unknown in any institutions heretofore existing in this kingdom for the administration of justice.

The *Globe* of Saturday last, which consistently advocated the establishment of the new courts, and still stoutly contends that the advantages of the measure will be lost if an appellate jurisdiction be created, furnishes a few instances of the legal acumen displayed by the judges, which would afford considerable amusement if they did not also excite very serious reflections.

"In a rural court, not far from the metropolis," says our contemporary, "a defendant having lost his cause, declared that he had no money to pay the debt; but added, that he believed his aunt would pay it. 'Oh,' said the

judge, 'then I will make an order upon your aunt.' This is now known in Westminster Hall as *My Aunt's case*."

Again :

"A judge in the North made three notable decisions last summer.—1. That a high price given for a cow imported a warranty of its soundness.—2. That if a horse were hired for a certain sum to go from A. to B., he might be taken any distance round, so that he came to B. at last.—3. That if a hired horse proved lame or unfit for work, he might be beaten *ad libitum* to make him go on."

We have heard of twenty judgments pronounced in those courts quite as absurd, which we refrain from publishing. It is quite clear that if gentlemen have been appointed to fill the situation of judges, and armed with such extensive jurisdiction, whose decisions have already become matter of public derision, and whose proceedings so soon begin to create general dissatisfaction, the system to be maintained must be essentially modified. An appeal to the superior courts, though indispensable for the purpose of creating uniformity of decision, will be insufficient, unless accompanied by other extensive alterations. It is said to be in contemplation to endow the new courts with a limited equity jurisdiction, in addition to the insolvency business lately transferred to them. This proposal, which we understand is already embodied in a bill, will probably be brought under the notice of parliament at an early period of the session, and afford an opportunity for exposing the defects of the present system, and discussing the best means of remedying them, which has not before occurred, and must not be lost sight of by those who desire to see the laws respected as well as obeyed.

## STATEMENTS OF DEBTS AND ASSETS OF INSOLVENT HOUSES.

SHERIDAN used to say, that in preparing for a financial statement, old George Rose always asked Mr. Pitt at which side of an account he wished the balance to appear, and arranged the figures accordingly. The mantle of the old financier has multiplied, and fallen upon the shoulders of the city accountants, who "cook up" the balance sheets of the great houses that have stopped payment after a fashion which proves that the art of writing fiction by figures has attained great perfection in our days. An esteemed correspondent has

analysed one of these precious documents, which has appeared in all the daily papers, and sent us the following by way of illustration of the mode adopted by accountants in manufacturing "a statement," which cannot fail to afford satisfaction to creditors.

A great East India house "suspends payment,"—it is not considered well bred to say "fails,"—and a meeting of creditors being duly convened, they are informed that the total amount of unsecured claims which can come against the defaulting firm is, in round numbers, 650,000*l.*; and that the concern has available assets of the value of 840,000*l.* This information is not only consolatory, but gratifying. The creditors reckon confidently on receiving twenty shillings in the pound. The only question is, how long the payment will be postponed? To determine this question it is necessary to look a little in detail to the statement of assets, and the two following items naturally invite attention from their magnitude and importance, viz. :-

|  |            |
|--|------------|
| Balance owing by the firm at Calcutta  |            |
| to the house in London   | - £750,000 |
| Estimated value of property and securities in the hands of certain creditors | - £351,000 |
| Amount owing to creditors holding the same                                   | - 335,000  |
| Surplus calculated as a portion of the available assets                      | - - 16,000 |

Upon a little further inquiry, it is ascertained that the firm in Calcutta and the house in London, although in law they are considered separate concerns, inasmuch as there is one partner in each firm who is not a member of the other firm, are in interest, and as regards their commercial existence, identical. 750,000*l.* of the assumed assets of the London house is alleged to be in the possession of the Calcutta house, but, no sooner does the overland mail reach Calcutta with the news of the London failure, than the house in Calcutta stops payment, and as the fashion of winding up under a committee of inspection is not yet established in the Indian presidencies, the Calcutta concern goes into the Insolvent Court, and whatever property is found in the order and disposition of the insolvents, constitutes the assets of the Calcutta house; and until all the debts due in India, and all the bills accepted by the London concern on account of the India house, and unpaid, (which may possibly amount to between 700,000*l.* and 800,000*l.*), are fully satisfied, the English

creditors can derive no benefit from the Indian concern. The item of 750,000*l.* is not available, therefore, for as many farthings.

As to the comparatively small item of 16,000*l.*, the estimated surplus of value of property in the hands of creditors, if correctly estimated, it only proves how effectually the London house had disposed of everything tangible by pledging and pawning; and, as the same system notoriously prevails in India, should the assets of the Calcutta concern realise the enormous sum of 400,000*l.*, it will be found that seven-eighths of that sum goes into the pockets of the fortunate creditors who are secured, and an insignificant residue remains to be shared amongst unsecured creditors whose claims amount to 600,000*l.* or 700,000*l.* If all the other items which are supposed to constitute the available assets of the London concern are satisfactorily established, and realised without loss, and at the least possible expense, the final result will be, that the London creditors may, in the course of the next spring share a magnificent dividend of 1*s.* 6*d.* or 2*s.* in the pound.

Upon "statements," which when fairly examined into, are no better entitled to confidence than that put forth in the case above stated, meetings of creditors are every day held, and come to resolutions to pay all creditors under 100*l.* in full, and allow the partners of the suspended concern to wind up; and whilst this operation is proceeding, to live in ease and comfort at the expense of their creditors. The forbearance exercised by the latter is only exceeded by their credulity: it will be found that both have a limit.

#### ACT AMENDING THE JOINT-STOCK COMPANIES REGULATION ACT.

JOINT-STOCK COMPANIES have in modern times become so important an element in the system of social organization, that no change in the law which affects them can be deemed undeserving of general attention. During the last session of parliament an act was passed to amend the 7 & 8 Vict. c 110,<sup>c</sup> the provisions of which, from its unpretending character, may have escaped the notice of some portion of our readers.

<sup>c</sup> The act is cited as the 10 & 11 Vict. c. 78, and printed at length, Leg. Ob. vol. 34, p. 610.

The act of 1844, which provides for the registration of joint-stock companies, and distinguishes between provisional and complete registration, amongst other things, enacted, that on the complete registration of any company, certified as prescribed in that act, it should be lawful for such company to purchase and hold lands for the purpose of occupying the same as a place or places of business of the said company, and also (with the license of the committee of the Privy Council of Trade) such other lands as the nature of the business of the company may require. It seems that some doubt was entertained, as to the meaning of the provision authorising the committee of the Privy Council to grant licenses, and by the act of last session, (10 & 11 Vict. c. 78,) it is provided, that when any company, after obtaining a certificate of complete registration, is desirous of acquiring an interest in land, such company may apply to the committee of the Privy Council for a license to purchase or hold the same, and the committee, if they think fit, may grant a license accordingly, authorising such company to purchase, take, and again let, sell, or otherwise dispose of, such lands, and to hold the same for a specified time, or from time to time, to acquire, dispose of, and again acquire such lands, &c., or to hold lands on mortgage, and such license may be framed with such conditions as, with reference to the special circumstances of the case, the committee may deem expedient. By subsequent sections, an account of the several licenses, and renewals or extensions of licenses, shall be presented to parliament annually, within fourteen days after the commencement of the session; and licenses granted before the passing of the act are to be deemed valid and effectual for the purposes therein expressed, and deemed evidence that the lands described or referred to in the license are such as the nature of the business of the company requires.

So far as these provisions may tend to dispense with the necessity of resorting to that most objectionable of all existing tribunals, a private committee of either house of parliament, and spare public bodies the enormous expense consequent upon an application for a private bill, they are a positive and unquestionable improvement; but we must be excused if we look with some degree of jealousy and suspicion upon a plan, which invests a body of official persons with authority to entertain in private, and grant or refuse, applications which

may possibly compromise private rights. By a fiction, every inhabitant of these kingdoms may be supposed to be cognizant of the proceedings of his representatives in parliament; but no one, not directly informed, can be supposed to be acquainted with the applications made to the committee of the Privy Council, for a licence to purchase, take, or dispose of land, or with the mode in which the committee may think fit to deal with such applications. The presentation to parliament of an account of the licenses granted at the commencement of each session, is obviously an ineffectual security to persons interested in the subject of such applications, as the license will have been granted, and therefore all the mischief done to the interests of parties, before they can have received any intimation that a license was applied for. Such applications should be publicly entertained, or, at all events, the committee should establish some regulations which would afford interested parties reasonable notice that an application for a license in any particular case was about to be entertained.

The 10 & 11 Vict. c. 78, contains another alteration of the existing law, of a totally different nature, the beneficial effect of which is at least questionable. By the Joint-Stock Companies' Regulation Act, (sect. 4.) the promoters of the companies, within the meaning of that act, are required to return to the Joint-Stock Companies' Registration Office a copy of "every prospectus, or circular, handbill, or advertisement, or other such document, at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company." The 4th section of the new act, after reciting that the registration of such prospectuses and advertisements has been found to be very burdensome to the promoters of such companies, repeals that provision, and substitutes an enactment requiring the promoters of companies to return to the Joint-Stock Companies' Registration Office, particulars, first, of the amount of the proposed capital of the company, and secondly, of the amount and number of shares into which the same is to be divided; and if the company shall be dissolved, or in any way withdrawn, or supposed to be withdrawn, from the operation of the 7 & 8 Vict. c. 110, the promoters shall forthwith give notice thereof to the Registrar of Joint-Stock Companies. In case of any alteration being made in any of the particulars registered, a return of such alterations

must be made within a month, under a penalty of 20*l.*; and there is a similar penalty on promoters issuing, at any time before complete registration, any prospectus, handbill, advertisement, or other document relating to the formation or modification of the company, and containing any statement at variance with the particulars returned to the Registrar of Joint-Stock Companies.

It can easily be conceived, that the promoters of schemes, who were constantly publishing varied, and sometimes inconsistent, announcements of their objects, intentions, and prospects, would be well pleased to be relieved from the obligation of putting on record, as it were, the statements, well or ill founded, by which they sought from time to time to captivate, persuade, or, it may be, delude the public. When prospectuses, or other announcements, "relating to the formation or modification" of a company, were put forward deliberately, considerately, and *bona fide*, we own we cannot understand how the deposit of a single copy at the Registration Office could be considered a burthen calling for the special interference of the legislature. We think we might suggest numerous instances, occurring within the last two years, in which the registration of prospectuses, and documents of a similar character, tended materially to advance the ends of justice, by enabling persons sued by, or suing, the promoters of companies, to produce, upon any legal investigation, an authentic statement of the plans, proposals, and promises, put forward by those who took a leading part in the formation and establishment of such companies. By dispensing with the registration of documents of this nature, we rather apprehend, that the legislature has deprived those dealing with the promoters of joint-stock companies of a protection to which they were fairly entitled, and afforded an additional facility for the dissemination of fraudulent and delusive statements concerning projected undertakings. In the present state of the country, and with the distrustful feelings with which proposals for the establishment of companies for any purpose requiring an investment of capital are now regarded by the public, the legislative dispensation granted by the act of last session may not be considered very material; but it is quite possible that the joint-stock bubbles of 1845 may be resuscitated under different names, at a future period, and the interposition of the legislature be again imperatively required.

## TOWNS IMPROVEMENT CLAUSES ACT.

10 &amp; 11 VICT. c. 34.

This is an Act for consolidating in one Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns. The extent of the Act is thus stated :—

Whereas it is expedient to comprise in one act sundry provisions usually contained in acts of parliament for paving, draining, cleansing, lighting, and improving towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such towns or districts as for ensuring greater uniformity in the provisions themselves; it is therefore enacted as follows :—

1. That this act shall extend only to such towns or districts in England and Ireland as shall be comprised in any act of parliament *hereafter to be passed* which shall declare that this act shall be incorporated therewith; and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

2. Interpretations of this act: "the special act:" "prescribed:" "the commissioners:"

3. Interpretations in this and the special act: number: gender: "person:" "lands:" "street:" "month:" "Superior Courts:" "oath:" "county:" "justice:" "two justices:" "quarter sessions:" "owner:" "cattle."

*Citing the Act.*

4. In citing this act in other acts of parliament, and in legal instruments, it shall be enough to use the expression "The Towns Improvement Clauses Act, 1847."

5. This act may be incorporated with other acts.

*Officers.*

6. Until an inspector is appointed under some general act, execution of works may be proceeded with without his approval.

7. Commissioners to appoint, subject to approval, a surveyor.

8. Surveyor, before entering upon office, to make a declaration.

9. Commissioners shall appoint an inspector of nuisances.

10. Surveyor and inspector of nuisances.

11. Commissioners to provide offices for surveyor and inspector.

12. Power to appoint, subject to approval, an officer of health.

*Surveys and Plans.*

13. Commissioners to cause a map of the district within the limits of the special act to be made, and to be open to inspection.

14. Ordnance may furnish commissioners with maps, or cause surveys to be made.

15. Level lines to be marked on map, and bench marks to be made for denoting the same.

16. Commissioners may cause maps to be engraved, &c., and pay expenses out of rates.

17. Commissioners to cause plans to be prepared of alterations of new works or alterations of existing works.

18. Before giving notice of construction of works, plans to be prepared and deposited in the office of the commissioners.

*Lands.*

19. The taking of lands to be subject to the provisions of this act and the Lands Clauses Consolidation Act, 1845.

20. Errors and omissions in plans, &c., may be corrected by justices, who shall certify the same. Certificate to be deposited.

21. Commissioners to make compensation for damage done. If parties cannot agree as to compensation, the same to be determined in manner provided by 7 & 8 Vict. c. 18.

*Sewers.*

22. Management of sewers and other works vested in the commissioners.

23. Drainage districts to be formed, subject to approval of inspector.

24. Power to commissioners to construct sewers where none exist, making compensation to owners of property.

25. Commissioners may alter sewers from time to time.

26. Commissioners not to destroy existing sewers, &c., without providing others. Penalty for neglect.

27. Commissioners to cause estimates to be prepared and submitted to the inspector.

28. Provision for the expense of making new sewers. Where lands, &c., were sufficiently drained before making new sewer, occupier to have a reduction made in his rates.

29. Provision for the expense of maintaining sewers, &c.

30. Penalty for making unauthorized drains.

31. Vaults and cellars under streets not to be made without the consent of the commissioners.

32. Streets may be stopped for repairs.

33. All sewers, &c., to be covered with traps.

34. Sewers may be used by owners and occupiers of land beyond limits of town or district.

*House Drains.*

35. Commissioners empowered to construct drains from house, charging owner, &c., with the expense.

36. No house to be hereafter built without drains being constructed.

37. Where houses are rebuilt, the level shall

be sufficient to allow a drain to be constructed.

38. Notice of buildings and rebuildings to be given to the commissioners.

39. Commissioners may signify disapproval within 14 days.

40. Houses built without notice, or contrary to provisions of this or the special act, may be altered.

41. If commissioners fail to signify their approval, &c. within 14 days, parties may proceed without.

42. Commissioners may require owners of houses to provide privies and ashpits for the same.

43. Penalty for neglecting to provide privy, &c.

44. Drains, privies, cesspools to be kept in good order by owners. If owners neglect, commissioners may cause the same to be done, and charge the owner with the expenses.

45. As to the inspection of drains, privies, and cesspools.

46. Penalty on persons making or altering drains, &c. contrary to the orders of the commissioners.

#### *Paving.*

47. Management of streets vested in the commissioners.

48. Commissioners to be surveyors of highways.

49. Commissioners liable to indictment for want of repairs.

50. Road trustees not to collect tolls within limits of act.

51. Power for the commissioners to pave public streets.

52. Commissioners may place fences to footways.

53. Where public streets have not heretofore been paved, commissioners may cause them to be paved, at the expense of the occupiers of adjoining lands.

54. Future streets may be declared highways.

55. Commissioners, upon completion of two-thirds of any street, may, upon application, require remaining one-third to be completed by owners of houses.

56. Penalty on persons altering pavements without the consent of the commissioners.

#### *New Streets.*

57. Notice of intention to lay out new streets to be given to commissioners.

58. Levels to be fixed by the surveyor to the commissioners.

59. If the commissioners fail to fix the level, the party may proceed without.

60. Persons laying out streets without notice to be liable to the expenses of subsequent alterations of levels.

61. Situation of gas and water pipes to be altered at the expense of the commissioners.

62. If gas or water company neglect to make the alteration, the commissioners may cause the same to be done.

63. Width of new streets for carriages 30 feet.

64. Houses to be numbered and streets named.

65. Numbers of houses to be renewed by occupiers.

#### *Improving Streets.*

66. Houses may be set forward for improving line of street.

67. Commissioners may purchase houses or ground for effecting additional improvements.

68. Houses projecting beyond line of street, when taken down, to be set back.

69. Future projections of houses, &c., to be removed, on notice.

70. Commissioners may cause existing projections to be removed, and compensation to be made.

71. Doors in future to be made to open inwards.

72. Doors opening outwards may be altered.

73. Coverings for cellar doors to be made by occupier. Penalty for neglect.

74. Waterspouts to be affixed to houses or buildings.

#### *Ruinous or Dangerous Buildings.*

75. Ruinous or dangerous buildings to be taken down or secured by owners, &c. If owner, &c., neglect to repair, commissioners may cause the same to be done, charging owners, &c., with the expenses.

76. The expenses to be levied by distress on the owner.

77. If owner cannot be found, commissioners may take the house or ground, making compensation provided by 7 & 8 Vict. c. 18.

78. Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

#### *Precautions during Repairs.*

79. Bars to be erected across streets while repairs or alterations are making, and lights placed at night.

80. Fences to be set up during repairs.

81. Penalty for not lighting deposits of building materials or excavations.

82. Penalty for continuing deposits of building materials or excavations an unreasonable time.

83. Dangerous places to be repaired or inclosed.

#### *Objections to Works.*

84. Commissioners to give notice of new levels or sewers.

85. Meeting of commissioners to hear objections in the presence of the inspector.

86. Persons aggrieved by order of commissioners may appeal to quarter sessions.

#### *Cleansing Streets.*

87. Commissioners to cause streets to be cleansed, and dust and ashes to be removed from the houses.

88. Occupiers to cause footways to be swept. Penalty for neglect.

89. Commissioners may compound for sweeping footways.

Dust, &c. collected to be vested in the commissioners



91. Commissioners may provide lands, &c. for deposit of soil and materials.

92. Dust boxes to be erected by commissioners.

93. Commissioners may cause public conveniences to be erected.

94. Commissioners to cause streets to be watered, and wells, pumps, &c. to be provided.

95. Commissioners to appoint scavengers.

96. Penalty for obstructing scavengers.

97. Penalty on persons other than scavengers removing dirt.

98. Penalty for conveying offensive matter at improper times.

#### Nuisances.

99. Stagnant pools of water and other annoyances to be removed.

100. Regulations to prevent accumulation of dung, &c.

101. On certificate of the officer of health, filth to be removed.

102. Houses to be whitewashed and purified, on certificate of officer of health, &c.

103. No interment in any grave without leaving two feet six inches clear of soil above the coffin.

104. Justices may order nuisances to be abated.

105. Penalty for disobedience of orders of justices.

106. Commissioners to order costs of prosecutions to be paid out of the rates.

107. Act not to affect nuisances at common law.

#### Smoke.

108. Fireplaces of factories, &c., to consume their own smoke.

#### Fire.

109. Party walls to be carried up through the roof. Walls of buildings and coverings of roofs to be made of incombustible materials.

[The remainder of this act will be given in the next number.]

### QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1847.

BESIDES the usual preliminary inquiries, the following is the substance of the questions put to the candidates for admission on the Roll of Attorneys:—

#### COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

A defendant, in an action of assumpsit against him on a bill of exchange, lets judgment go by default,—state the mode, if only one, or the different modes, if more than one, by which the plaintiff can proceed to ascertain the amount due to him.

In *scire facias*.—If plaintiff obtain judgment by default or otherwise, is he entitled to costs? and if so, does the right accrue at common law, or is it given by statute?

After a judge's order for time to plead, fur-

ther time is required—Within what time should the summons for such further time be served and returnable in order to prevent judgment by default?

An order for particulars of plaintiff's demand is obtained with a stay of proceedings in the meanwhile, pending the time allowed for pleading—What time is allowed to the defendant to plead after the delivery of the particulars?

In ejectment, lessor of plaintiff is nonsuited at the trial for want of defendant confessing lease, entry, and ouster—How must he proceed in order to obtain possession of the premises sought to be recovered, and how to obtain payment of his costs?

After verdict for plaintiff, the court grants a new trial, and the rule by which the same is granted is *silent* as to costs; the cause is tried again, and the plaintiff again obtains a verdict—Is he entitled to the costs of the first trial?

A. grants a lease to B. for 21 years, at the rent of 100*l.* per ann.; at the end of three years, B. assigns the remainder of his term to C., subject to payment of the rent; after the assignment to C., rent becomes due to A., who, not being able to obtain payment from C., calls on B. to pay,—B. objects that he has assigned to C.;—Is B. liable to pay rent?

In what number of years is a debt on simple contract barred by the Statute of Limitations, and how may such a debt be revived?

When there are several parties who are entitled jointly to sue in an action of contract, and one of those parties is abroad, does the statute run against the others?

Is an infant liable under any, and what circumstances, to be sued for a debt on simple contract incurred by him?

Is there any, and what difference, between the lien of a country attorney and that of his town agent, with reference to the costs due from a client?

When a writ of *capias* is granted by a judge for arrest of a defendant, is such writ of *capias* the commencement of the action? If not, how otherwise is the action commenced?

Where a party has a lien on goods as a security for a debt, and such debt becomes barred by the Statute of Limitations, does the lien continue, or is it at an end?

A. enters into a bond to B. in the penal sum of 1,000*l.* conditioned to pay 500*l.*, and interest; B. assigns the bond to C.; A. does not pay his bond, and it becomes necessary to sue him. In whose name should the action against A. be brought? and state the reason for the answer.

Plaintiff brings an action of covenant to enforce payment from defendant of 100*l.*, and interest, which defendant, by indenture between plaintiff of the one part and defendant of the other, covenanted to pay, and which is overdue. Defendant pleads that the indenture is not his deed. What evidence must plaintiff give at the trial to entitle him to a verdict?

#### EQUITY AND PRACTICE OF THE COURTS.

In what cases, and upon what grounds will

a court of equity grant relief? State some of them.

How, or by what means, should a person proceed to obtain relief in a court of equity?

What are the two first proceedings incumbent on a defendant in his defence to a suit in equity, and what respective times are allowed for those purposes?

How many parties defendants may be named in one subpoena, and how should a subpoena be served?

In case a defendant be served with a subpoena and omit to appear in due time, how should a plaintiff proceed?

Under what circumstances is a defendant permitted to demur to a bill? State some of them, and can he demur to a part only?

Must a demurrer or plea be put in upon oath or not?

What step should the plaintiff take if the defendant put in an answer which is considered insufficient, and within what time should that step be taken?

If exceptions be taken to an answer for insufficiency, how should a defendant proceed to avoid their being referred to a master to report thereon, and within what time should he so proceed?

If exceptions to the defendant's answer are allowed or submitted to, within what time should he put in his further answers?

If a defendant claim no right or interest in the property or thing claimed by the plaintiff, how should the defendant proceed, and within what time should he take the necessary step?

If a defendant has not time to prepare his answer, plea, or demurrer for filing within the time prescribed for the purpose, how should he proceed to obtain further time?

Within what time is the answer of a defendant deemed to be sufficient?

What notice is necessary to be given before moving to assign a guardian for an infant defendant?

According to the practice of the Court of Chancery, can a commission to examine witnesses abroad be obtained before the time for answering has expired?

These two heads of inquiry are deemed essential to be satisfactorily passed, inasmuch as the form of the certificate requires an adequate knowledge in the candidate to practise as an attorney and solicitor. He is next required to answer in one of the three following departments :-

#### CONVEYANCING.

What are the several species of estates tail, and by what form of words may they be respectively created?

How is an estate tail to be barred by the tenant in tail in possession, distinguishing the different modes of so doing as to freehold and copyhold estates, and as to money subject to be laid out in the purchase of land to be settled to uses in strict settlement?

If the tenant in tail is not in possession, how is the same object to be effected?

Is the tenant for life, or who else, entitled to the custody of the title deeds?

Can the half blood inherit in any and what cases?

Is a freehold estate liable to payment of simple contract debts, and in what order of distribution?

Within what time must it be provided that the contingencies of an executory devise shall happen?

At what time is a possibility of issue extinct in law?

State the general effect of the statute 27 Hen. 8, c. 10, called the Statute of Uses, and of the 27 Hen. 8, c. 16, called the Statute of Enrolment, and to what species of deed the latter applies.

When there are three mortgagees, can the third in any and what manner protect himself against the second, and will the fact of his having had notice when he advanced his money on the second mortgage, interfere with such protection?

Is a mortgagor barred of his equity of redemption by any and what length of time, and how may such right be preserved?

When is real estate considered as personal and personal as real?

Should the direction to sell an estate be discretionary or absolute in order to constitute an equitable conversion of the freehold into personality?

If real estate be purchased out of partnership funds, is it treated as real or personal estate in any and what respect?

Is there any and what power given to the husband in barring dower, where the marriage took place after 1st January, 1834?

#### BANKRUPTCY AND PRACTICE OF THE COURTS.

State the several proceedings to be taken for the purpose of obtaining a fiat.

What are the facts necessary to be proved in support of a fiat?

Is the bankrupt entitled to any, and what notice, before the adjudication takes place, and is he entitled to any and what notice of the adjudication?

If the bankrupt intend to dispute the adjudication, must he give any and what notice, and to whom?

Describe the course of proceeding at the several ordinary meetings under the fiat, and for what purposes special meetings are convened.

Can a creditor of a bankrupt, whilst holding a collateral security from the bankrupt for his debt, prove the debt under the fiat without giving up such security, and if he so prove, what is the effect of the proof upon the rights of the creditor with respect to such security?

If a creditor hold, as security for his debt, a mortgage or other security of property not belonging to the bankrupt, and not given by him, can such creditor prove for his debt without affecting such security? and if so, state some reasons why he should be permitted to do so.

If a creditor hold a legal mortgage from the

bankrupt by way of security for his debt, what is the course to be adopted to make such security available; and is there any and what difference in the mode of proceeding when the security is not a legal but an equitable mortgage?

What are the rights and liabilities of assignees as to leasehold property held by the bankrupt? State what is the proper course to be adopted by them in the event of their determining to adopt, and also in the event of their determining to relinquish, the bankrupt's interest in such leasehold property.

Can an action be maintained by assignees for damages supposed to have been sustained by the bankrupt for slander or assault, or any other personal injury or damage sustained by the bankrupt before his bankruptcy, not affecting his property?

When and how may a bankrupt obtain his certificate?

From what debts and liabilities will his certificate discharge him?

Is a bankrupt, after he shall have obtained his certificate, liable to be committed for refusing, after demand, to attend the assignees for any and what purposes, or if he refuse to do any act necessary for getting in his estate?

May a bankrupt be committed for refusing to answer questions relating to the disclosure of his property, if such answer would tend to criminate him; and to what court must an appeal from the decision of commissioners in bankruptcy be now made?

Is there any, and what, recent alterations in the jurisdiction of commissioners in bankruptcy in regard to traders owing not more than 300*l.*, and other persons, not traders, seeking protection from arrest?

#### CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

Define the different classes of offences cognizable in criminal courts.

State what offences are bailable, and before whom the bail must be given.

What is the mode of proceeding in exhibiting articles of the peace?

What is the rule of evidence as to the confession of an accused person?

Under what circumstances is the declaration of a dying person receivable in evidence?

Are any, and what persons precluded from giving evidence; and are there any, and what means by which a witness, otherwise incompetent, may be rendered competent?

What is the power of a justice of the peace over questions between master and servant?

State the mode of proceeding to obtain a writ of mandamus, and how the party, against whom it is granted, can try its validity.

A public bridge is out of repair, and the liability to repair is disputed, how is the question to be tried?

What is the mode of proceeding to set aside an order of magistrates under the Poor Laws?

Give the legal definition of the offence of conspiracy.

Define a common nuisance.

Can an outer door be broken open to apprehend an accused person without a warrant?

Can any, and what malicious injuries to property be punished in a summary way before one or more magistrates?

Proceedings are brought against a man for unlawfully taking game by night, when does the night in such case begin and end?

The candidate who comes from the country will probably choose the conveying questions, though some who have been brought up in the offices of clerks to magistrates may select the last head of questions. Others from large trading and commercial districts may be better acquainted with bankruptcy business. On the whole, it is manifest that the examination is very fairly and judiciously conducted.

#### WESTMINSTER COUNTY COURT.

Before *D. C. Moylan, Esq.*, Judge.

ATTORNEY'S PRIVILEGES.

*Wood v. Lewis.*

THIS was an action to recover 7*l.* 10*s.* of the defendant, an attorney, residing in Grosvenor Street, who pleaded his privilege. Mr. *P. Bunkes* appeared in support of the defendant's case and plea of abatement, contending that the 67th section of the new act for the recovery of small debts did not destroy the privilege of attorneys of their right of being sued in their own courts, as they were not specially mentioned in it, which was required, as they could not come under the designation of "persons." Mr. *Hildyard* commenced his argument, but

The learned judge said, If I thought that any additional labour of my own could throw any light on the matter, I would postpone my judgment for further consideration. But the case has been so fully argued by defendant's counsel, that I feel satisfied no further research could put it in a more favourable point of view for him, and I may, therefore, at once state my opinion and judgment upon the question. This action is sought to recover 7*l.* 10*s.* for goods sold and delivered. The defendant *Lewis*, relying on his common law privileges as an attorney, denies the jurisdiction, and demands to be sued in the superior court to which he belongs. The plaintiff replies that the privilege is abolished by the 67th section of the 9 & 10 Vict., c. 95. I am clearly of opinion that the privilege is gone as to attorneys, without any reservation; and, moreover, that the rights and privileges of the Universities of Oxford and Cambridge, as well as of the Stannaries of Cornwall (as to exemption from the county courts jurisdiction) would have been likewise abolished but for the saving clauses (140 and 141) of our own act. It is quite true that not only attorneys, but all

the ministerial officers of justice, had a privilege of suing and being sued in the courts to which they respectively belong. If it was not the intention of the legislature to abolish by the 67th section this kind of privilege, what on earth could have been the intention? But I am utterly at a loss to conceive how language more plain or express could be used in carrying out this intention. The 67th section is in these words: "And be it enacted, that *no privilege*, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this act." In the subsequent clauses (140 and 141) these exceptions are set out, and no mention is made therein of the common law privilege, by virtue of which Mr. Lewis now claims his exemption—*Expressio unius est exclusio alterius*. With regard to the numerous cases to which reference has been made, I cannot find that any of them go beyond this point, that without express words of enactment, the then existing privilege of an attorney or ministerial officer of a superior court, could not be discharged. These express words are, in my judgment, to be found in the 67th section of the act. Most of the cases referred to in support of the privilege seem to me to have little immediate bearing on the question now before the court. Some turned upon the distinction between an attorney-plaintiff and an attorney-defendant, as in *Board v. Parker*, 7 East, 48, and *Elkins v. Harding*, 1 Cr & J. 345. In other cases, as in *Lewis v. Kerr*, 5 Dowl. 447, and in *Dyer v. Levy*, 4 Dowl. 632, the question was, whether the 2nd Will. 4, c. 39, called the "Uniformity of Process Act" took away the old common law privilege. It was held in those cases that a new form of process was prescribed in lieu of the old mode of proceeding by bill; that the attachment of privilege was abolished, not the privilege itself. In the case of *Wiltshire v. Lloyd* (1 Douglas, 380.) it was questionless held that an attorney claiming his privileges was not liable to be sued in the Middlesex County Court. In order to know the value of that decision, and discover its applicability to the present case, it is requisite to refer to the act constituting the Middlesex County Court, the 22d Geo. II., cap. 33. I find that the fourth section of that act says, "No person shall be liable to be summoned to the County Court who was not so before." Not a word is to be found in the act about privilege, which it leaves exactly where it was. In that case during the course of argument it was stated that the legislature had found it necessary to pass a second act for the establishment of the Westminster Court of Requests (24 Geo. 2, cap. 42), merely because it was found that attorneys were not included within the jurisdiction by the general words used in the first act (23 Geo. 2, cap. 27). It is true that in the second act the privilege is specifically abolished, but the preamble merely declares that "doubts had arisen whether attorneys were, even under the general words of the first statute, subject to the new jurisdic-

tion." The legislature merely intended to set all those doubts at rest. I do not think that argument could go further. To return, however, to the case before me. The plea in abatement is what in law is called an "odious plea," and wholly disentitled to favour. If any serious doubts could exist, Chief Baron Gilbert, whilst treating on privilege in his History of the Common Pleas (page 209), lays down this principle—"Whenever an attorney is impleaded out of his own court, he shall say that he is an attorney of another court. But this is to be understood only when the plaintiff can have the same remedy against the officer in his own court as in that where he sues him." Now, let us see what the inevitable practical effect would be of upholding this privilege of exemption in attorneys. Would it not, in fact, amount to an absolute denial of justice? So far as attorneys are concerned, the title of the act should be amended, and called "an act for the more difficult recovery of small debts." The 129th section of the 9 and 10 Vic., cap. 95, is in these words:—"And be it enacted, that if any action shall be commenced after the passing this act in any of her Majesty's superior courts of record for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in any court holden under this act, and a verdict shall be found for the plaintiff for any sum less than 20*l.*, if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs, as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court." Thus, if the expense and difficulty of proceeding hitherto for small sums in the superior courts were found oppressive, how much more so will this section render it in future? In practice it would secure a perfect immunity to attorneys, defendants, if the privilege were now to be recognised. It does not appear to me at all probable that any judge would certify that an action for less than 20*l.* in cases of contract, or 5*l.* on tort, was a fit one to be brought in a superior court, merely because the defendant was an attorney. Admitting even that the privilege exists, still it would be clearly competent to a defendant attorney to waive it; and how is a plaintiff on entering a plaint to foresee whether or not the attorney would plead or waive his privilege? Until he did plead it, there could be no question raised. The point, however, seems to excite so much interest in the profession, that, strong as my opinion is, and free from a shade of doubt, I will, if Mr. Lewis undertakes to move the Queen's bench for a writ of prohibition, stay the judgment until the case is argued before that high court.

Mr. *Banks* said he would consult his client upon the subject, and would let the other side know whether they would issue out a writ of prohibition or not.—*Daily News*, Nov. 1, 1847.

## SELECTIONS FROM CORRESPONDENCE.

## INCORPORATED LAW SOCIETY — LIBRARY AND LECTURES.

To the Editor of the *Legal Observer*.

SIR,—Having for the last two or three sessions been a subscriber to, and constant attendant at, the lectures given by the "Incorporated Law Society," and having made many inquiries respecting the library of that institution, I find that the clerks of members are admitted to that library on payment of a small annual sum, while the clerks of non-members are debarred from the benefit that must necessarily arise from the opportunity of having such valuable books to peruse.

Now, sir, as the clerks of non-members are admitted to the advantages afforded by the committee of the institution in the nature of lectures, upon payment of an increased fee, I think that it at least would be but equitable to throw open the doors of the reading room, and by so doing the doors of knowledge, to the clerks of members of the legal profession who may be articulated to gentlemen unfortunately non-members of that society on their paying in proportion to that paid by them for the lectures beyond that of the clerks of members.

I hope you will take this into your serious consideration, and through the columns of your valuable and widely circulating journal, induce the committee to complete the good work they have so ably commenced.

G. B.

[Formerly the council had power, which they liberally exercised, in favour of clerks attending the lectures; but, at the instance of some of the members, when the application was made for a renewal of the charter, (on the surrender of the joint-stock shares,) that power was taken away. Whether, on the intended enlargement of the building, and under a special bye-law, the council may be enabled to accommodate these meritorious students, we cannot say, but hope some satisfactory arrangement may be effected.—ED.]

## COSTS IN THE COUNTY COURTS.

I had lately occasion to sue for a debt due to a client in the Middlesex County Court, Whitechapel district, which was ordered for payment; but, to my amazement, on asking for the usual costs of my attendance, I was distinctly and peremptorily refused them by the court, because the debt was admitted. I in vain urged that I was necessarily ignorant of the fact until the cause was heard. The time of myself and my clerk was occupied the greatest part of the morning in attending the court.

Let me hope that in the amendment of the act, which seems indispensable in the present session, that it may be rendered obligatory on the court to order the payment of costs.

Considering, also, the utter impossibility of

an attorney being able to attend at different places simultaneously, I submit that he ought to be allowed to send a competent clerk to these tribunals, possessing a general authority for the purpose.

AN ATTORNEY OF NEARLY 40 YEARS  
STANDING.

## ABSENCE OF COUNSEL.—AUDIENCE OF ATTORNEYS.

At the Middlesex Sessions, as reported in the *Daily News* of the 16th instant, on the trial of two persons indicted for an assault, a gentleman, who said he was an attorney for the defence, addressed Mr. Serjeant Adams, the presiding judge, and said that Mr. Ballantine had been retained for the defence, but he was not in attendance, and it was very hard for his clients to be put upon their trial without their counsel. The brief and fee had been given to Mr. Ballantine weeks before, and yet his clients were now to be tried without him.

Mr. Serjeant Adams said he could not help that; attorneys should give their briefs to counsel who would attend.

Mr. Payne (who appeared for the prosecution) said his friend, Mr. Mellor, would defend the case in the absence of Mr. Ballantine.

The attorney said this was a real hardship. Mr. Mellor could not be so well acquainted with the facts as the proper counsel, and it was very unfair that counsel should take fees and "refreshers," and then fail to discharge the duties for which they were paid.

Mr. Serjeant Adams said he wished the attorney would hold his tongue: the court did not know who he was, and could not listen to him! The case must proceed.

Mr. Mellor questioned the witnesses for the defence.

[In a recent case, the Lord Chief Baron, in consequence of the absence of counsel, permitted the attorney to examine witnesses. This is a question in which the interest of the public and the due administration of justice is concerned, and it cannot be permitted to remain in its present state. The judges of the Inferior Courts should at least be courteous to professional men, endeavouring to discharge their duty to their clients.—ED.]

## THE MEETING OF PARLIAMENT.

THE New Parliament assembled on Thursday, the 18th instant. The Right Hon. Charles Shaw Lefevre was elected Speaker of the House of Commons. As yet, no notice has been given of any measure touching the alteration of the law, nor is it likely that any subjects save those of *Finance* and *Ireland*, will be entertained before Christmas. "Sufficient for the day is the evil thereof."

## THE NEW TAXING MASTER IN CHANCERY.

**JOSEPH PARKES, Esq.**, of Great George Street, Westminster, has been appointed Taxing Master of the Court of Chancery, in lieu of George Gatty, Esq. This gentleman is a solicitor of great experience, and very competent to discharge the duties of the office. The appointment appears to have given general satisfaction in the profession.

## LEGAL OBITUARY.

1847, *Sept.* 21.—George Dennis John, of Penzance, Cornwall, Solicitor, aged 54. Admitted on the Roll, Hilary, 1816.

*Sept.* 27.—L. Morison, of Gray's Inn, Barrister-at-Law, aged 33. Called to the Bar, Nov. 18, 1840.

*Sept.* 27.—Richard A. Price, of the Middle Temple, Barrister-at-Law. Called to the Bar, June 11, 1841.

*Sept.* 29.—Adam Yates Bird, of Kidderminster, Solicitor, aged 55. Admitted on the Roll, Michaelmas, 1815.

*Sept.* 29.—Hannibal Sandys, Solicitor, aged . Admitted on the Roll, Trinity, 1785.

*Sept.* 30.—Richard Rosser, Solicitor, aged 90. Admitted on the Roll, Trinity, 1788.

*Sept.* 30.—Edward Barron, of 29, Bloomsbury Square, Solicitor, aged 53. Admitted on the Roll, Hilary, 1816.

*Oct.*—John James Bond, of Hythe, Solicitor. Admitted on the Roll, Trinity, 1814. He was Coroner for the Borough of Folkstone, and Clerk to Justices of Folkstone and Hythe.

*Oct.*—Edward Trollope, of 60, Carey Street, Solicitor, aged 45. Admitted on the Roll, Hilary, 1826.

*Oct.*—Henry Hoyle Oddie, of 18, Carey Street, Solicitor. Admitted on the Roll, May 24, 1803.

*Oct.* 10.—David Davies, of 4, Henrietta Street, Covent Garden, Solicitor, aged 52. Admitted on the Roll, Michaelmas, 1826.

*Oct.* 20.—Thomas John Burgoyne, of 160, Oxford Street West, Solicitor, aged 72. Admitted on the Roll, Michaelmas, 1795.

*Oct.* 21.—Richard Grainger Blick, of the Middle Temple, Special Pleader, aged 80.

*Oct.* 23.—Richard Tolson, of Bradford, Solicitor, Clerk of the County Court, aged 55. Admitted on the Roll, Hilary, 1815.

*Oct.* 23.—William Davidson, of 21, Bloomsbury Square, Solicitor. Admitted on Roll, Hilary, 1822.

*Oct.* 30.—Geo. Kinderley, of Lincoln's Inn, Solicitor, aged 80. Admitted on the Roll, Trinity Term, 1792.

## ATTORNEYS TO BE ADMITTED.

*Michaelmas Term, 1847.*

### Queen's Bench.

#### *Clerks' Names and Residences.*

Adams, James Patten, 88, Harrison-street, Regent-square; and Martock . . .  
Austin, Charles Addington, Luton . . .  
Arnold, George, 38, Southampton-buildings; and Tonbridge . . .  
Anderson, Henry, York . . .  
Allan, Edward, 50, Upper Norton-street . . .  
Arnold, George Matthew, 83, High Holborn; Gravesend; Rochester; York-road, Lambeth . . .  
Avis, Henry, 25, Lincoln's-inn-fields . . .  
Bagshaw, Thomas Pittard, Manchester . . .  
Boothroyd, Edward Hyde, Stockport; and Shaw Heath House, near Stockport . . .  
Boys, Alfred William, 31, Finchley-road, St. John's-wood . . .  
Bramwell, William Henry, Sunderland; Houghton-le-Spring; and Durham . . .  
Barrow, James, 1, Prince's-place, Duke-street, St. James's; and Manchester . . .  
Berners, Henry, jun., Wakefield; and Mark-lane . . .  
Boyd, James, Crown-court, Threadneedle-street . . .  
Barkworth, Joseph Charles, 21, Victoria-road, Pimlico; and St. Mildred's-court . . .  
Bleaymire, Edward, 10, Granville-square, Pentonville; and Penrith . . .  
Brodrick, J. Dudden, jun., 2, Regent's-place-west; 22, West-square; and Shaftesbury . . .  
Barnes, Edward Samuel, 2, Falcon-court, Fleet-street; and Wells . . .  
Brooks, William, 2, Lamb's-conduit-place . . .

#### *To whom Articled, Assigned, &c.*

James W. Adams, Martock . . .  
Frederick Purvis, Bedford-row . . .  
E. C. Williamson, Luton . . .  
W. Gorham, Tonbridge . . .  
J. Carnell, Tonbridge . . .  
R. H. Anderson, York . . .  
John Lawford, Drapers'-hall . . .  
George Essell, Rochester . . .  
Thomas Mumblings Vickery, Lincoln's-inn-fields . . .  
John Bagshaw, Manchester . . .  
John Boothroyd, Stockport . . .  
W. W. Dyne, Lincoln's-inn-fields . . .  
John Bramwell, Durham . . .  
J. P. Aston, Manchester . . .  
B. Dixon, Wakefield . . .  
A. K. Hutchinson, Crown-court . . .  
T. P. Waite, Louth . . .  
F. Vallings, St. Mildred's-court . . .  
William Bleaymire, Penrith . . .  
John Rutter, Shaftesbury . . .  
Robert Davies, Wells . . .  
James Brooks, Odham . . .

|   |   |
|---|---|
| Bolton, John, 29, Acton-street, Gray's-inn-road; Blackburn; Manchester-street; and Argyle-st. | J. Hargreaves, Blackburn<br>F. J. Ridsdale, Gray's-inn                                  |
| Baker, Isaac Palmer, 2, Ampton-street, Gray's-inn-road; Ipswich; and Liverpool-street         | S. B. Jackaman  |
| Barrett, John William, 8, Great-college-street, Westminster; and Taunton                      | James Waldron, Hartswell<br>Charles Parsons, Temple-chambers                            |
| Banks, William Laurence, Brixton-hill; and 34, Pall-mall                                      | Richard Banks, Kington<br>C. Procter, New-square, Lincoln's-inn                         |
| Bell, John Gillain, Cambridge   | Stephen Adcock, Cambridge   |
| Burder, John, 27, Parliament-street   | W. G. Bolton, Austin-friars   |
| Barrow, Edward Jackson, Bloomsbury-square   | W. Henry Cullen, Edward Barrow, Bloomsbury-square—William Briscoe, William Clarke, Bath |
| Bell, James, 35, Arlington-street, Camden-town  | James Blair, Uttoxer<br>C. M. Stretton, Southampton-buildings                           |
| Brooke, William Henry, Dudley   | Thomas Goode and John Bolton, Dudley  |
| Brandon, Gabriel Samuel, 163, Strand  | Henry Vallance, Essex-street  |
| Baker, Joseph, Birmingham   | William Haines, Birmingham  |
| Buswell, William, Northampton; and Upper Charlotte-street                                     | A. Paget, Leicester   |
| Cattell, Christopher William, 1, Brunswick-row, Queen-square                                  | J. Orde Hall, Brunswick-row, Queen's-square   |
| Cook, George, 33, Arlington-street, Camden-town; Brecknock-place; Furnival's-inn              | R. Gadsden, Furnival's-inn  |
| Cressey, George Lister, York  | J. H. Thomas, York  |
| Crawford, William, Leeds  | Robert Barr, Leeds  |
| Catterall, Paul, jun., Preston  | P. Catterall, Preston   |
| Clay, Charles, jun., 4, Warwick-court; Knighton; and Gower-place                              | R. Green and T. Peters, Knighton<br>William Hine, Charterhouse-square                   |
| Chippendale, Edward, 130, Bunhill-row   | Thomas Hustwick, Soham  |
| Cater, James, jun., 8, Bedford-row; Barnsbury-street; Walsall; and Soham                      | John Jaques, Ely-place<br>W. C. Chew, Manchester  |
| Chew, Townley, 10, Old-house-terrace; Barnsbury-park; and Manchester                          | C. Carter, Barnstaple   |
| Clarke, William, 26, Wilmington-square; Salisbury-street, Strand; King-square                 | J. S. Rymer, Whitehall-place  |
| Calthorpe, Thomas Dounie, Morden-college, Blackheath; and Doddington-grove                    | Godfrey Tallents, Newark-upon-Trent   |
| Congreve, John, Newark-upon-Trent; 14, Calthorpe-street                                       | W. Chartres, Newcastle-upon-Tyne  |
| Cockcroft, L. Maving, Colebrook-row, Islington; and Newcastle-upon-Tyne                       | John Ridehalgh, Ripponden   |
| Carr, William James, 4, Portland-terrace; De Beauvois-town; and Ripponden                     | George Dempster, Brighton<br>Charles Chalk, Brighton                                    |
| Cheesman, John Goodger, 4, North-place, Gray's-inn; Steyning                                  | S. Waller, Cuckfield<br>H. Hughes, Clement's-lane                                       |
| D'Aeth, George William H., jun., 2, Mitre-court, Fleet-street                                 | M. Bloome, Leeds  |
| Dobson, John, 57, Swinton-street, Gray's-inn-road; and Leeds                                  | William Dickson, sen., Alnwick  |
| Dickson, William, jun., 6, Wells-street, Gray's-inn-road; Alnwick; and Soley-terrace          | John Fox, Nottingham  |
| Duffy, Richard Arthur, Nottingham   | James Clift, Bloomsbury-square  |
| Dineley, Frederick, 30, Bloomsbury-square   | William Dewes, Ashby-de-la-Zouch  |
| Dewes, William Petit, 3, Raymond-buildings; Ashby-de-la-Zouch; Northampton-place              |   |

[This List will be continued in our next Number.]

#### LAW APPOINTMENTS.

THE Tithe Commissioners for England and Wales, have appointed Henry Fleming, Esq., Barrister-at-Law, to be an Assistant Tithe Commissioner for special purposes, and the said Henry Fleming was sworn in on the 22nd day of October, inst., before Sir E. V. Williams, at his Chambers, Rolls Garden, Chancery Lane, according to the Act for the Commutation of Tithes in England and Wales. Oct. 18.

H<sup>ER</sup> Majesty has been pleased to appoint Sidney Billing, Esq., Barrister-at-Law, to be Queen's Advocate and Police Magistrate for her Majesty's settlements in the Gambia.

George Spence, Esq., Q. C., has been appointed Lecturer on Equity, by the Honourable Society of Lincoln's Inn.

[Mr. Long is the Lecturer on Civil Law and Jurisprudence, at the Middle Temple, and Mr. Lewis, on Conveyancing, at Gray's Inn. The Inner Temple has not yet decided on its Common Law Lecturer.]

#### MASTERS EXTRAORDINARY IN CHANCERY.

From Sept. 21st, 1847, both inclusive, with dates when gazetted.

England, Robert, Hull. Oct. 5.  
Notcutt, Stephen Abbott, Ipswich. Oct. 22.

# RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

**Lord Chancellor.**

*Re Rothery.* Nov. 14th, 1847.

RE-EXAMINATION OF BANKRUPT AFTER COMMITTAL FOR UNSATISFACTORILY ANSWERING.

*A bankrupt will not be allowed to be brought up for re-examination, except at his own expense, after having been twice examined and committed for unsatisfactory answers, when there are grounds for expecting satisfactory examination.*

Mr. Swanston stated, that this was a petition of a bankrupt, against whom a *fiat* had been issued in August, 1844, and who had been shortly afterwards committed to York Castle for not giving an account of his estate to the satisfaction of the commissioner. The petitioner prayed that the bankrupt might be brought up and again examined at the expense of the assignees, (who had only about 10*l.* from the produce of the estate, and who refused to pay his expenses of being brought up, or of sending a commissioner to examine him), or that he might be brought up or examined, and the expenses defrayed out of one of the bankruptcy funds. If it was necessary for the benefit of the creditors that the bankrupt should be examined, as the learned counsel contended was the case in the present instance, the bankrupt might be brought up and examined over and over again, and the commissioner must attend gratis, and wait for his fees until future assets, if any, could meet them. *Ex parte Graham*, 2 Bro. C. C. 43; and *ex parte Cohen*, 18 Ves. 294. The latter case was strongly in point. The Lord Chancellor had jurisdiction by the 5 & 6 Vict. c. 122, ss. 86 and 87, to order the payment of the commissioners and registrar's travelling and other expenses out of the *Bankruptcy Fund Account*.

Mr. Bayshawe appeared for the assignees to resist the petition, on the ground of gross fraud on the part of the bankrupt, and that there was no reasonable expectation of a fuller statement by him of his estate at the time the *fiat* issued. The bankrupt might certainly be examined as often as he chose, but it must, except in extraordinary cases, be at his own expense. *Ex parte Baxter*, Mont. & Mac. 16, 21; *In the matter of Stockwin*, 5 Ad. & El. 266; *Ex parte Crossley*, 3 Dea. & C. 392, and 1 Mont. & C. 40.

The Lord Chancellor said, that it had been held in the Court of Queen's Bench in this case, that the bankrupt had been properly committed after he had been twice previously examined and committed for not giving satisfactory answers to the commissioner respecting his property. The present petition contained no allegation that he could or would give any other account now, nor did it otherwise appear that he would. His Lordship did not think that he ought, under the circumstances of this

case, where no better result of an examination could be hoped for, open the funds formed under the Bankruptcy Amendment Acts for the purpose of defraying the expenses of such a bankrupt, and therefore refused the petition.

*Masterman v. Lewin.* Nov. 13, 1847.

INTERPLEADER SUIT.—JUDGMENT.

The Lord Chancellor gave a formal judgment in this matter, to the effect intimated by his lordship in his observations at the hearing on the 21st January last. The arguments and *quasi* judgment on that occasion will be found reported in 33 Leg. Obs. 353.

His lordship directed that the heir at law should pay the costs of the proceedings in the Masters office.

**Rolls Court.**

*Vernon v. Thellusson.* July 28, 1847.

PURCHASE MONEY.—CREDITOR'S SUIT.

*In a creditor's suit, the court will not shorten the interval interposed by the ordinary practice between the order nisi for liberty to pay purchase money into court, and the making that order absolute, though all the parties to the suit consent.*

In this cause, which was a creditor's suit, an order *nisi* for liberty to pay purchase money into court had been obtained on the 21st instant.

Mr. Shebbeare now moved, with the consent of all parties to the suit, to make the order absolute, although the full interval of seven days required by the ordinary practice had not expired: but

Lord Langdale refused to make the order; observing, that the object of interposing this interval was to give time for applications to be made to open the biddings, and that in a creditor's suit the parties to the cause were not able to dispense by consent with the ordinary rule.

*Benson v. Morris.* July 26 and 27, 1847.

BILL OF SUPPLEMENT.

*A defendant to a bill in which a common decree to account has been made, may ask by way of supplement for a decree as for wilful default, arising out of matter discovered by him in the Master's office.*

In this case the bill was filed by the residuary legatees of a Mr. Barrow against Mr. Morris, his executor, for an account. The bill contained charges of wilful default against Morris, and his answer contained admissions, upon which a decree directing an account as for wilful default might have been founded, but no case for such a decree was made at the hearing, and therefore a common decree only was taken.



But, in the Master's office, the testator's widow, who was made a defendant in respect of an annuity given her by the testator, and which his assets had proved insufficient to pay, discovered for the first time that Morris had allowed a mortgage for 1,000*l.* belonging to the testator, and a sum of 387*l.*, secured to him by a promissory note, to remain outstanding for six years after the testator's death, and that in consequence his estate had sustained a loss; and she now filed a supplemental bill, alleging these facts, and asking for a decree under which Morris could be charged as for wilful default. The only question was, whether the bill could properly be made supplemental to the former suit, or whether it must not be an original suit.

Mr. Pitman and Mr. Middleton for the plaintiff.

Mr. Kindersley and Mr. Walford for Mr. Morris.

Mr. Martindale, for the residuary legatee.

*Hodson v. Ball*, 1 Phill. 177; *Shepherd v. Towgood*, T. & R. 379; and *Parker v. Constable*, 13 Sim. 536, were referred to.

The Master of the Rolls expressed his opinion, that the suit was properly supplemental, observing, that if he had thought the frame of the present bill wrong, he should have given the plaintiff leave to file a new bill.

*Garder v. Garder*. July 18, 1847.

76TH ORDER OF MAY, 1845. — SERVICE. — TAKING BILL PRO CONFESSO.

*The time from which the three weeks required by the 76th Order of May, 1845, to elapse between the notice of a motion to take a bill pro confesso and the motion is to be computed, is the date of the last service of the notice, if there has been more than one.*

Mr. Winstanley moved, that the bill in this case might be taken *pro confesso*, under the 76th Order of May, 1845. It appeared that two days after having served the defendant with the notice of the motion, under an order for substituting service, the plaintiff again served him personally. Counting from this personal service there wanted one day to the full time of three weeks required by the order. But the full time was expired if the reckoning were made from the time of the substituted service. Mr. Winstanley contended, that the second service left the first unaffected; it amounted to no more than telling the defendant that the plaintiff persevered in the intention of moving to take the bill *pro confesso*.

Lord Langdale said he thought it amounted to more; the plaintiff had not relied upon the first service, he had gone and served the defendant personally. The defendant must consider, that for some reason the plaintiff had waived this first service. The practice on taking a bill *pro confesso* was strict. The plaintiff might have told the defendant, if he chose, that he intended to proceed on the former service, but by the course he had taken, he thought he had put it out of his power to make the present application.

Vice-Chancellor of England.

*Ex parte Morrison*. Nov. 12, 1847.

INFANT. — PAYMENT OF MONEY OUT OF COURT.

*Where an infant, entitled to the dividends of a fund in court, is resident without the jurisdiction under the care of a guardian, the court has authority to order the dividends to be paid to the officer of the court in this country, he being responsible for the remittance of the same to the foreign guardian.*

In this case the petitioner was an infant residing in America. Her uncle had some time since died intestate, leaving a sum of 1,047*l.*, which was transmitted by the consul to the treasury, from whence it was subsequently paid to Sarah Morrison, the sister of the deceased, who took out letters of administration to his estate. Sarah Morrison afterwards paid the sum of 483*l.* into court as the distributive share of the infant petitioner, and the infant now called on the court to deal with the dividends of the 483*l.*; praying also for the appointment of a guardian in this country to receive the same.

Mr. Stuart appeared for the petitioner, and suggested, that as the infant was not a ward of court, and was residing out of the jurisdiction under the care of a guardian in America, the proper course would be to order the payments of the dividends to the officer of the court here, who would be responsible for the proper remittance of the money to the American guardian. *Stephens v. James*, 1 Myl. & Keen. 627.

The Vice-Chancellor made the order in that form.

*Gough v. Bult*. Nov. 13, 1847.

CONSTRUCTION OF WILL. — VESTED INTEREST IN LEGACY.

*Where a testator by his will directs his trustees, at their free will and pleasure, without the consent of his wife, to sell and dispose of such parts of his messuages and tenements by his will given to her, and to pay such parts of the monies to arise from such sale, not exceeding 200*l.*, to each of his sons for setting them up in business, or for such other purposes as his wife should think fit: Held, that one of the sons who had died without receiving the 200*l.* took a vested interest in the same fund that his legal personal representatives were entitled to have the sum raised.*

JOHN Bult by his will, dated the 5th of June, 1819, amongst other things, devised as follows: "Whereas, I have not heretofore by this my will made any provision for raising a particular capital or sum to enable my sons to begin and carry on business; and whereas I may not have sufficient ready money or stock in the public funds or other securities to pay the legacies bequeathed by me. Now it is my will, and I hereby order and empower my trustees, at their free will and pleasure, and without the consent of my wife, either by pub-

lic auction or private contract, to sell and dispose of such part of my messuages or tenements and premises hereinbefore given or intended for the benefit of my said wife for the most monies and best price that can be obtained for the same, and to pay such parts of the monies to arise from such sale, not exceeding the sum of 200*l.*, to each of my said sons for setting them or either of them up in business, or for such other purposes as my said wife shall think proper and most beneficial for my said sons." The testator died in 1823, leaving three children, John, Samuel, and Hannah. John died in the lifetime of the widow, without having any money raised for his benefit under the above clause in the will. The widow was still alive. The personal representatives of John, the son, now filed a bill, claiming to be entitled to the sum of 2,000*l.*, and praying that the same might be raised by a sale of a sufficient part of the property. The question was, whether the sum of 2,000*l.* was an absolute vested gift in John Bult the son, and which, on his death, passed to his personal representatives, or whether under the words a discretionary power only was given to the trustees at a particular time and for a particular purpose to raise this sum, and John Bult having died without its having been raised, whether it did not fall into the residue.

Mr. Stuart and Mr. Stinton for the trustees of the will contended that the trust was entirely a discretionary one with them; both the time of payment and the amount to be raised was left to them. How then could it be said that the plaintiffs were entitled to a fixed sum of 2,000?

Mr. Bethell and Mr. James contra.

The Vice-Chancellor said, if at the time when the testator died John had a right to say, raise the sum of 2,000*l.* and pay it to me for the purpose of enabling me to set up in business, or as my mother should direct, he thought it would have been the duty of the trustees to raise the money, and he considered it quite ridiculous to say, because they had not done so, that nothing was to be raised. John had, *primâ facie*, the right to the 2,000*l.*, unless at least some other sum was fixed upon at the death of the testator; had John been alive, he could have called for the 2,000*l.* Whatever right he had then vested in him at his death went to his legal personal representatives, and though the trust was not executed, yet a vested right remained to have it executed. His opinion was, therefore, that the executors had a perfect right to call upon the trustees now to execute the trust and have the 2,000*l.* raised.

*Callow v. Howle.* Mich. Term, 1847.

EVIDENCE.—ANSWER OF FEME COVERT.

*Where a married woman answered jointly with her husband, in a suit relating to the wife's separate estate, the court, in the absence of any authority to the contrary, allowed such answer to be read against herself.*

A BILL was filed by a solicitor for the purpose of charging the separate estate of a married woman with the expenses of preparing the settlement of such estate. In the course of the hearing it was proposed by the plaintiff's counsel to read the wife's answer as against herself.

The point was discussed by Mr. K. Parker and Mr. Spurrier, who objected to the admissibility of the evidence under such circumstances, and by Mr. Wigram and Mr. Younge, who proposed.

The Vice-Chancellor. "In the absence of any authority, I must act upon my own notions of the principles of evidence. According to those notions, the answer of a married woman, with whom the husband does join, can be read against her in a suit respecting her separate estate."

Queen's Bench.

(Before the Four Judges.)

*In re Macey.*<sup>a</sup> 15th Nov. 1847.

ATTORNEY.—STRIKING OFF THE ROLLS.

*Circumstances under which the court refused to rescind an order for striking an attorney off the rolls.*

*When an order to strike an attorney off the rolls shall be made at any future time, the judges will see the order obeyed at once in court.*

*The rolls are to be produced for that purpose.*

Lord Denman. On the first day of this term an application was made to rescind a rule made absolute in the course of last term, directing that Charles Macey should be struck off the roll for having been guilty of an attempt to suborn Josiah Wallis to commit perjury in an action brought by one Thomas Wood against the late Earl of Portarlington. The rule was made absolute after a hearing in the presence of my brothers Patteson and Erle and myself. The motion to rescind that rule was made before the court as now constituted,<sup>b</sup> and all of us have, therefore, thought it necessary to look into all the affidavits as well those filed as to rules made in the cause as those relating to the rule which we are now asked to rescind. We think the main fact, on which the rule to strike off the roll was made absolute, to have been completely proved, although the statement of it is, in several particulars, contradicted by affidavits, and though much imputation was cast upon Wallis, both as to his general character<sup>a</sup> and as to his conduct in this particular case. Macey has himself admitted enough to convict him of the offence. The undisputed facts of the case are these. The late Earl of Portarlington employed Macey to defend him in an action brought to recover the amount of a certain bill of exchange. The pleas put on the record were, that the money had been won by the plaintiff from the defendant at play, and that the money lent was money to pay the losses at play thus incurred. The cause stood on the list for the

<sup>a</sup> See ante, p. 10.

<sup>b</sup> Lord Denman and Justices Colridge, Wightman, and Erle.

Summer Assizes at Lewes, and Josiah Wallis was proposed to be called as a witness. Macey stated, that up to the time of the cause being in the list for trial he had no evidence to support the pleas, but that the Earl had informed him that the money had been lent for the purposes stated in the pleas, and Macey's statement went on to say that he had been in company with the plaintiff's attorney, and Wallis who was his clerk, upon the evening previous to the trial, and that after separating from them and retiring to his own bed-room, it occurred to him that Wallis, who had formerly been the clerk of Pyne, the Earl's former attorney, was probably acquainted with the facts mentioned by the Earl, and thereupon he wrote those facts upon two slips of paper, one for the purpose of showing to Wallis, and the other for the purpose of instructing counsel. Here it must be observed that Macey afterwards said that Gill had told him from whom information might be drawn as to the matters for which the money had been lent, but his statement did not contain one word to show that the Earl had told him any thing as to the knowledge that Pyne or Wallis had upon this subject. The paper spoken of was in these terms. Here his lordship read the paper.<sup>c</sup> (It suggested that Wallis, when the clerk of Mr. Pyne had known that a person came to Mr. Pyne's office to demand payment of the bills, and on being informed of the intended defence, had gone away, and no action had been brought for a long time afterwards.) At the bottom of this paper something was written in pencil thus, "Query 5/." Macey had gone to Brighton immediately before the assizes in company with Rickards and Wallis, and he did not deny that when after breakfast Rickards left him and Wallis together, he placed this paper in Wallis's hand. He admitted that it was intended to intimate to Wallis that he might be able to give evidence which would afford a full answer to the action and would obtain a verdict in favour of his client, the client of the attorney who presented Wallis with this paper, a verdict which, up to that time, it appears that the defendant's attorney had no reasonable hope of obtaining. No man can read that paper without believing that it was an offer to bribe Wallis. We are clearly of opinion that it was so. The counsel for Macey were compelled to admit that the court could not arrive at a different conclusion. Let us see how far this conclusion was supported by circumstances. The motion to strike Macey off the rolls was made in November, the trial having taken place in July; the affidavits in answer to the motion were prepared in December and January. Macey had ample time to see that nothing important was omitted from his case, yet Macey did not give any answer to the motion. He swore that he did not know how he came to write the paper. We do not give credit to that statement. He did not then venture on any statement that the facts had been at the time forgotten by him; the counsel could not give a plausible excuse

for the paper so as to make it consistent with innocence or with a less degree of guilt than that which our construction put upon it. The paper is not pretended even now to have any other meaning. With this dark cloud around him, with his memory of facts defective, with no satisfactory explanation of this paper offered, and Wallis being by him represented as a needy and unprincipled man, we are required to reverse our own deliberate decision, and again to give him an opportunity of practising as an attorney. He would now have us believe that Wood, with a strange candour, admitted that the money he sought to recover was money lost at play, and that he made this admission, not upon being promptly applied to by Macey's noble client, but that he went to the attorney's office and made an unnecessary and voluntary acknowledgment in the presence both of Pyne and his clerk. Pyne had the misfortune to be struck with paralysis when this rule was applied for; he has now recovered from the attack, and he has come forward to make the following representation. He says, that in the month of Dec. 1841, a person, whom he did not then know, but now understand to be Coyne, came to his office and conversed with him on the subject of certain bills of exchange given by the Earl; that he communicated to the Earl the fact that a person had called on the subject, and he was led to believe by the Earl that that person must be Wood, that he afterwards again saw that person, and stated to him that the Earl refused to renew the bills; for that the money secured by them was money lost at play at the plaintiff's house, which the person alluded to admitted, but said that the Earl ought in honour to pay the bill. The Earl, however, refused, and Mr. Pyne informed this person now known as Coyne that he would defend the action on that ground. Mr. Pyne is enabled to fix the day of this conversation by an entry in his day-book, and knows that the person pressed for a renewal of the bills or for security by an Irish judgment. He believes that Wallis was fully aware of the fact of this conversation, and was present at one or both of the applications so made by Coyne. In March 1845 the Earl brought the deponent (Mr. Pyne) a writ of summons in this action, and expressed his intentions to defend it, and gave him instructions accordingly; but the deponent, on account of ill health, handed it over to Macey, and stated to him at the time what had occurred, and deponent's own belief of the improbability that the plaintiff would proceed with the action, the deponent at that time still believing that the person who had made the admissions to him was Wood the plaintiff. The affidavit vouches the deponent's belief that this communication caused and led Macey to entertain the *bonâ fide* belief that Josiah Wallis was fully aware of such facts as would make out a complete defence. He expresses a confident opinion to this effect, and the court is desired for this reason to continue Macey in his practice as an attorney. If Mr. Pyne thinks that his unfortunate incapacity to speak upon this matter when it was first moved, allowed us to

<sup>c</sup> See *ante*, vol. 34, p. 329.

be led into error, he is not only justifiable but praiseworthy for now attempting to correct that error. We do not assume an improper motive in him for thus coming forward with his testimony, but we must examine his evidence with care before we can determine to undo what we have deliberately done. His statement is open to some obvious and strong observations. He says he knows the time of the conversations from the entry in the day-book. The time is not material, but the entry is most important; it might show many things, such as whether the person used any name descriptive of himself when he came to speak on this matter, on whose authority he came, and whether Wallis was present at one or both of those interviews. Wallis is stated to be the clerk, but there is nothing whatever to show that he was present, or that he had any knowledge which would warrant Mr. Pyne in the information he described himself as having given to Macey as to these supposed facts, or warrant Macey in believing that Wallis could prove them. It is possible that he may have given information as to the facts, and equally so that he may have given it without sufficient grounds for doing so, but then it follows that if he is a person who makes these statements to an attorney whom he is instructing to defend an action so loosely, we must with the greater care examine what he now alleges as a transaction so long past. The Earl, who must have been fully aware of the importance of the facts thus stated, made affidavits declaring that the defence was true in substance and in fact, but without making the slightest reference to the facts now set forth by Mr. Pyne. And there were affidavits drawn up to be sworn by the Earl, but which his death prevented him from swearing, in which the truth of the defence and the fact that he had instructed Macey to set it up are stated, but there is no attempt even to insinuate that the defendant in the action had ever made the admission now relied on in the presence of Wallis. But what is shown by the conduct of Mr. Macey himself? According to the circumstances now stated, he became the attorney for a defendant with the false assurance that there was a complete defence which could be proved by Pyne or Pyne's clerk. It is a striking fact that he never took the least minute nor memorandum of this proof, nor of the means of establishing it. Mr. Pyne believes that his communication led Macey to entertain such belief, but yet it never occurred to Macey, until after he had been struck off the roll, that he had received such a communication. On the contrary, he put forth the statement that the possibility of proving the case by Wallis's evidence occurred to him after he had retired to his bed-room, when he thought that Wallis could prove what Gill had informed him. He acted then on his own speculation that Wallis had probably some knowledge about the bills. When it is considered that the affidavit of Macey was drawn up after full notice of the question to be considered, we are drawn to the conclusion that Mr. Pyne did not give the information he supposed. Mr. Pyne must be in error in his belief on this subject.

As to the testimonials given to the general character of Macey, they are pointed to this particular transaction. The respectable persons who pronounce the judgment that Macey is a man incapable of offering a bribe, would no doubt deny that he could write the paper which is undoubtedly his.

There is one affidavit which we must now notice, the affidavit of Remmett. That affidavit amounts to this; that Foster had told him that Wallis had said he could prove what is supposed. This is not hearsay but the echo of hearsay. Foster was also to make an affidavit, and is said to have promised to do so, but he afterwards refused, on the ground, it is stated, that his employer wished him not to do so. Why the employer expressed this wish is not stated. We wish to say that it is no part of the duty of counsel to state from affidavits any report of what is said by persons who are not parties to the proceeding, except for the mere purposes of fixing a date. An affidavit of A. that B. has told him something but has declined to swear to the truth of that statement, is not important, and ought not to be presented to the court. Such matter merely distracts the attention of the court from the real issue. But it happens here, as in other instances, that the statement does not help the purpose for which it is produced. If true, it is only an additional reason why the striking off the roll was warranted. Foster is represented to have said that Wallis had asserted himself capable of proving the conversation spoken to in the affidavit, and that Macey had declared he could make out the defence if that conversation should be sworn to. No doubt any defence could be sustained if an unprincipled man would swear to such a fact, but the attempt to get it sworn to without any knowledge, whether it was a fact or not, is the very offence charged against Macey. We think that there cannot be any doubt that Macey has been guilty of the misdemeanour for which he has been ordered to be struck off the roll of attorneys of this court. This penal proceeding is the consequence of his own gross misconduct. We trust that this will be a warning to others, and will prevent them from engaging in practices of this criminal nature; but such was not the primary motive of our judgment, which was that such persons should not continue to practise their profession with the authority of this court. Those who think Mr. Macey unfortunate only and not wrong, may employ him in a subordinate capacity, but we think that we cannot allow him to remain on the roll with honourable men, nor hold him out to the world as a person fit to be trusted as an attorney.

We understand that Mr. Macey has not in fact been struck off the roll, notwithstanding the rule which we made last term. We do not now inquire how this has happened, but we direct that on any such occasion in future, the roll shall be brought before us into court, and we will see our order at once carried into effect. We expect it to be done here.

Application to rescind the rule of last Term refused.

## Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

*Warburg v. Read.* Trinity Term, 1847.

## COURT OF REQUESTS. — JURISDICTION. — COSTS.

*An action was commenced in a superior court in December, 1846, for a debt recoverable under the provisions of a Court of Requests Act. Notice of declaration was given on the 28th of March, 1847, on which the defendant paid the debt. The Court of Requests Act provided, that where a party commenced proceedings in the superior courts for a debt recoverable under the Court of Requests Act, he should have no costs. The plaintiff, however, demanded 6l. 17s. costs, which not being paid, he signed final judgment on the 1st of May, and issued execution. No county court was established in the district until March, 1847 :*

*A motion being made to set aside the execution and enter a suggestion on the roll to deprive the plaintiff of costs.*

*Held, that as the plaintiff had commenced his action in the superior court at a time when he would not have been entitled to any costs, he could not recover them now ; for the 9 & 10 Vict. c. 95, merely repealed Courts of Requests Acts from the time of the establishment of the County Courts in the districts where the Court of Request existed.*

This was a rule obtained by *Sewell* on the 27th of May, before *Coleridge, J.*, calling on the plaintiff to show cause why the execution herein should not be set aside, and why he should not bring in the plea roll to make the defendant to enter a suggestion thereon to deprive the plaintiff of costs, under the provisions of a Local Court of Requests Act, 46 Geo. 3, c. 66, the debt claimed being under 5l.

The rule was obtained on affidavits, disclosing the following circumstances :—The writ of summons in the action was issued on the 1st of December, 1846, and claimed a debt of 3l. 6s. This was served on the 28th of March, 1847. On the 29th, the next day, notice was given by the defendant to the plaintiff by letter, that he resided within the jurisdiction of the Isle of Wight Court of Requests. On the 10th of April, notice of declaration was given, upon which the defendant paid the debt, which the plaintiff received, but claimed 4l. 10s. for costs. This the defendant refused to pay, whereupon the plaintiff on the 20th of April signed judgment, and on the 1st of May issued a *fiery facias* for 6l. 17s., under which the sheriff levied on the 3rd, and sold the goods on the 13th. It also appeared, that at the time the action was commenced the defendant was resident at Newport, in the Isle of Wight, and so was within the jurisdiction of the Isle of Wight Court of Requests Act. There was also the usual provisions in that act, that where a party commenced an action in the superior courts for a debt recoverable under that act, he should

not have any costs by reason of a verdict in his favour. It further appeared, that a county court had been established for the Isle of Wight district, under 9 & 10 Vict. c. 95, on the 22nd of March 1847.

*Bramwell* now (7th of June) showed cause, and contended, first, that the effect of the provisions in the Court of Requests Act as to costs only applied to cases where there had been a trial, and it had been ascertained by a jury that the defendant was entitled to have his cause tried in the Court of Requests, and the application should be made before judgment signed. *Calvert v. Everard*, 5 M. & S. 501; *Tidd's Pract.* 996. Then, the Court of Requests Act is repealed by the New County Courts Act, 9 & 10 Vict. c. 95, which, by the 5th, 6th, and 7th sections, repeals all Courts of Request, and only keeps alive proceedings commenced in them for certain purposes. The rule, too, is irregular, as it does not go to set aside the first judgment, but only the execution. Now, where a party complains of an irregularity, he must go to the root of it.

*Sewell*, in support of his rule, was directed to confine himself to the question of the repeal of the Court of Requests Act by 9 & 10 Vict. c. 95.

*Sewell*. First, there is nothing here to show that the Court of Requests Act is in any way repealed; for the 9 & 10 Vict. c. 95, merely gives the Crown power by an order in council to order in what districts County Courts may be held; and then this court will not take judicial notice of an order of council, and there is no evidence of one before the court; but even if there were, the Court of Requests Act is not repealed as to proceedings in it pre-existing. The words of the act are by no means a positive repeal of the Courts of Requests Act. The present case is one of a proceeding commenced in the superior court at a time when the cause of action might have been commenced in the local court, and if it had, it could have been continued in the County Court under the new act. With regard to the form of the rule, we are right in seeking to set aside the execution. This was done in *Burbidge v. Marvin*, 12 M. & W. 8. We were not damaged until the issuing of the execution, and then gave notice immediately to the sheriff.

*Cur. adv. vult.*

*Wightman, J.*, (June 12,) gave judgment. In this case the writ was issued on the 1st of December, 1846, and served on the 28th of March, 1847, and judgment signed on the 20th of April. No local court had been constituted under the provisions of the 9 & 10 Vict. c. 95, for the district in question, till the 22nd of March, 1847. It has been said, in answer to Mr. *Sewell's* motion, that the 9 & 10 Vict. c. 95, in fact repealed the provisions of the Court of Requests Act. By this act (the 46 Geo. 3, c. 66, s. 40,) it was enacted, that if any action or suit for any debt recoverable by virtue of the act in the Court of Requests be commenced in any other court whatever, the plaintiff shall not, by reason of a verdict in his

favour, be entitled to any costs. Now there is no doubt, that when this action was commenced, namely, on the 1st of December, 1846, the debt was recoverable in the Court of Requests; and if that is so, it appears to me that the plaintiff would not be entitled to any costs on judgment by default on verdict, or otherwise. The decision in *Burbidge v. Marvin* applies, though the plaintiff has judgment here by default. It is conceded, in the present case, that the debt was within the Court of Requests' Act, unless the 9 & 10 Vict., c. 95, entirely superseded that court. It seems to me that it does not supersede the 40th section of the 46 Geo. 3, c. 66, because that applies to the time at which the action was commenced, and, for all that appears, the debt was recoverable in the Court of Requests down to the 22nd of March, 1847. The 9 & 10 Vict., c. 95, does not contain an absolute but qualified repeal of the Court of Requests acts. It only provides, that, as soon as a court shall have been established in a district under the act, all enactments affecting its jurisdiction shall be repealed. That being so, it seems to me that it has not the effect of repealing the 46 Geo. 3, c. 66, so far as to entitle the plaintiff to recover his costs in this case. The rule, therefore, must be made absolute, the defendant undertaking not to bring an action. Rule absolute.

### Common Pleas.

*Rushbrooke v. Hood.* Michaelmas Term, 1847.

STAMP ACTS.—DISTINCT MATTERS IN ONE INSTRUMENT.—FURTHER CHARGE.

*A deed by which a copyhold estate is conveyed to a purchaser, and also a mortgage is secured to a third party as a security for the advance of the purchase money, is not an instrument containing several distinct matters, within the meaning of the 12 Anne, ses. 2, c. 9, s. 24, and therefore, not liable to more than one deed stamp of 1l. 15s.*

*A second and subsequent deed, by which the same estate is, by a covenant on the part of the mortgagor, charged as a security to the mortgagee for a further advance of money, is only liable to the proper ad valorem duty, being only a further mortgage charge within the meaning of the Stamp Act.*

THIS was an action of covenant; and at the trial before *Patteson, J.*, at the last Suffolk Assizes, a verdict had been found for the plaintiff for the sum of 515l. 18s. 7d. The first count in the declaration set out an indenture, dated the 13th of April, 1842, which recited, amongst other things, a contract of sale of certain copyhold estates to the defendant, and an agreement for a mortgage of the said estates by the defendant to the plaintiff to secure 400l., which mortgage was to be carried out simultaneously with the purchase; and further, that two surrenders of the estates of even date had been passed, the one to such uses as the plaintiff should appoint, and in default, to the de-

fendant and his heirs, and the other to the use of the defendant and his heirs, subject to that made to the plaintiff; and after conveying the estate, it contained the usual covenants of title by the parties of the first part with both the plaintiff and defendant, and their heirs, &c., covenants also by the defendant for the payment of principal and interest to the plaintiff, and other usual mortgage covenants and provisos. The second count set out an indenture, dated the 29th of April, 1843, between the plaintiff and defendant only, which recited that the 400l. secured by the former deed had not been paid, and an agreement by the plaintiff to advance the further sum of 100l. on the security of the same estate. The indenture, as set out, then contained a covenant by the defendant for the payment of the further sum of 100l. and interest, and the other usual mortgage covenants and provisos. Of both the covenants for payment of principal and interest contained in the deeds so set out, breaches by the defendant were alleged in the declaration. The pleas were *non est factum*, and a set-off. No admission under the surrenders appeared to have taken place. When the deeds were produced at the trial, the first bore a 1l. 15s. stamp in addition to the proper progressive stamp, and the second deed a 30s. *ad valorem* stamp. It was thereupon objected, that they were insufficiently stamped, and therefore inadmissible in evidence. The learned judge, however, thought otherwise, and received them; and in order to reduce the damages to the sum of 103l. 3s. 7d., on the ground that the first deed had been improperly admitted in evidence, or to the sum of 412l. 15s., on the ground that the second ought not to have been so admitted.

*Rouse* now moved for a rule *nisi*. The first deed contained two distinct and separate matters of contract, and ought, therefore, to have borne, not merely a stamp in respect of one of such matters, (as it did,) but in respect of both. The objection rests entirely on the 12 Anne, ses. 2, c. 9, s. 24, which provides, that where any one or more of the matters or things charged with stamp duty shall be written upon one piece of parchment or paper, the duties shall be charged upon every one of such matters. *Tilsley's Stamp Laws*, 357. With respect to the second deed, the point is, that it ought to have borne a deed stamp of 1l. 15s., and not merely an *ad valorem* mortgage stamp. No admission of the mortgagee had taken place, and it cannot be considered as operating only as a further mortgage charge, but is in truth a distinct covenant by the mortgagor of the copyhold estate, and therefore within the principle of *Haywood v. Bibby*, 11 M. & W. 812. The deed could not, it is submitted, be considered as falling under the definition mortgage in the Stamp Act.

*Wilde, C. J.* \* It seems to me that neither of the objections is well founded. It is not necessary to say that objections of this nature, which are set up with the intent to charge a party with stamp duty, require a construction which is well warranted by the clear plain

language of the statute. As to the first objection, it appears that a party having agreed to become the purchaser of a copyhold estate, procures it to be surrendered, not to him directly, but to a person appointed by him, by whom the amount of the purchase-money is advanced, to be held by the latter by way of security for such amount. The whole of the deed taken together cannot be considered as containing distinct transactions, but only one mode of working out one transaction, and there is no good ground for contending that it falls within the statute of Anne, which means that a party shall not avoid the duty imposed by the legislature by choosing to use one piece of parchment for the purpose of writing on it several distinct instruments. As to the second deed, I own I have had some little doubt. The object of it is to give to the party advancing the purchase-money a lien or charge on the copyhold estate for the further sum of 100*l.*, lent in addition to the 400*l.* before advanced to pay the price of the estate. Now, what is to be understood by a mortgage within the meaning of the Stamp Act? Some instrument, it appears to me, by which a party seeks to charge an estate for an advance of money. The present deed expresses that the estate shall be holden as a security for 100*l.* It recites the previous charge of 400*l.*, and secures the 100*l.*, in addition, on the same estate. I think, therefore, it falls within the express terms of the Stamp Act now in force, namely, a deed of further charge, and as the proper *ad valorem* duty has been paid, both this and the other deed were properly received in evidence at the trial.

*Coltman, J., Maule, J., and Williams, J.* concurred.

Rule refused.

### Court of Exchequer.

*Spindler and wife v. Grillett.* Nov. 12, 1847.

#### PROMISSORY NOTE.—PRESENTMENT WHEN NECESSARY.

*Where a promissory note was payable to A. at 10, Duncan Street, the want of averment of presentment in the declaration held to be fatal on general demurrer.*

THE declaration was on a promissory note for 200*l.*, payable to Miss Jesse Hope, at 10, Duncan Street, Edinburgh, and had no averment of presentment there. The defendant demurred generally, and the point was the want of an averment of presentment.

*Addison*, in support of the demurrer, submitted that the note not being negotiable, a presentment at 10, Duncan Street, was necessary, and referred to *Fleetwood v. Curley*, Hob. 267; *Sanderson v. Bowes*, 14 East 500; *R. v. Stevens*, 5 East 244; *Emblin v. Dartnell*, 12 M. & W. 830; *Pearce v. Champlin*, 3 Dowl. 276.

*Needham*, contra, contended, that *at* in the note meant *or*, and was merely a description of the person, and not a designation of a place of payment, and that a presentment was not

necessary in the case of a non-negotiable instrument, and referred to *Wain v. Bailey*, 10 A. & E. 614.

*Lord Chief Baron.*—What is to be inferred from that case is, that where an instrument is not negotiable, an allegation of readiness to pay it at all times if produced, is no answer to the action. There is this distinction between negotiable and non-negotiable instruments, that in the case of the one not capable of negotiation as the demand never can be made by a third party, saying, that you are ready to pay on the production of the note, is no answer to the action.

*Alderson, B.* The difference is, the one note is payable to the person named only; the other to any one who produces it.

*Rolfe, B.* It seems strange that, if a person promises to pay at a certain place, and is ready to pay there, he should be liable to an action without a demand there. If the note was, I promise to pay on application at 10, Duncan Street, Edinburgh, it would be clearly necessary to apply at that place; but if the custom of merchants implies that from the words “at 10, Duncan Street, Edinburgh,” I cannot see how it is the less necessary to apply there.

*Needham* then proceeded to argue that the allegation in the declaration that the female plaintiff was always ready and willing to re-

ceive the amount of the note, “according to the tenor and effect thereof,” amounted to an allegation of presentment, as it was impossible for her to be ready and willing to receive the amount according to the tenor and effect of the note, unless she was present at the place designated, and cited *Ambrose v. Hopwood*, 2 Taunt. 61; *Huffam v. Ellis*, 3 Taunt. 415.

*Addison* replied.

*Pollock, C. B.* The declaration states that the defendant promised to pay Miss Jesse Hope at 10, Duncan Street, Edinburgh, 200*l.* three months after date. That is the form of the note, and the question now to be decided is, what is its legal effect. It appears to me that the note, from the form of it, was made payable at 10, Duncan Street, Edinburgh. Serjeant Onslow’s act does not apply to a promissory note of this description. It is said that there is a distinction between negotiable and non-negotiable instruments. There is, no doubt, a distinction between them. The note not negotiable is available in the hands only of the party to whom it is made payable, and therefore the loss of it is the less important; while, in the case of the negotiable note, the right to payment is vouched by the production of the instrument. Where the contract is between the parties themselves, the place of payment is more likely to be important than where the negotiable character of the instrument might put it into the hands of other persons in other places. *Mr. Needham* contends that, a demand at the place must be inferred, because the declaration alleges that the plaintiff was always ready and willing to receive the amount. But that averment does



not, in my opinion, supply the want of an averment of a demand at the place. In *Huf-fam v. Ellis*, there was an averment of a demand of the person, but not in express terms at the place; but as it was alleged to be according to the tenor and effect of the instrument, the House of Lords, after judgment on

a sham plea, held, that that must be taken to mean at the place, as otherwise it could not be according to the tenor and effect of the instrument. For these reasons I think that the defendant is entitled to judgment.

*Parke, Alderson, and Rolfe*, Barons, concurred.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Law of Railways.

#### ALLOTMENT.

1. *Receipt.—Stamp.*—The acknowledgment by a banker of the receipt of money paid as deposit upon shares allotted in a joint-stock company does not require a receipt stamp.

Where a plaintiff seeks to recover back the amount of deposit paid by him upon the allotment of shares in a projected joint-stock company which is afterwards abandoned, he must give in evidence the letter of allotment. *Clarke v. Chaplin*, 34 L. O. 567.

2. *Stamp.*—A party applied by letter for shares in a projected railway company, and received in reply a letter, stating that ten had been allotted to him, and that he must pay the deposit into a banker's named by a certain day, or the committee might cancel the allotment: *Held*, that these letters were admissible in evidence without a stamp. *Vollans v. Fletcher*, 34 L. O. 598.

And see *Deposits*.

#### ASSIGNMENT OF SHARES.

*Liability of assignor.—Want of interest.*—A. and B., on behalf of themselves and all other shareholders of a company provisionally registered, except the defendants, filed a bill against 18 of the managing committee, for an account of the expenses, and for the division thereof rateably on each share, and for a return of the residue to the shareholders, and also for payment of the deposits on shares reserved by the defendants, and that they might be decreed to make good all loss occasioned by their mismanagement, and also for an account of the assets and debts and liabilities, and for a receiver and injunction.

To this bill one of the defendants pleaded in bar, that B. had assigned his share and interest to C.

*Held*, that the plea was good in substance, inasmuch as a state of circumstances which would prevent B., if sole plaintiff, from obtaining relief at the hearing would not, on account of A. having a present interest, sustain the bill against a demurrer.

That, although the plea admits the allegations of a bill to be true, yet if the bill do not show a case under which one plaintiff would be entitled to relief, notwithstanding the assignment of his shares, and without reference to another plaintiff, the plea will be held good.

That no case of liability being made by the

bill, an allegation to that effect raised by the argument, and only arising by implication from the circumstances stated, will not be held sufficient to sustain the bill.

That B. having assigned his shares, cannot in the character of trustee represent his assignee C., nor the absent shareholders on behalf of whom he professes to sue.

The plea in this case being too general in form, and not sufficiently detailing the particular transaction on which the plea was founded, the court gave leave to amend, and reserved the costs. *Doyle and another v. Muntz and others*, 4 Carrow & Oliv. 422.

See *Shareholder*.

#### BANKRUPT.

*Scrip shares.—Proof in respect of.*—A broker, by order of a customer, purchased certain scrip shares in a projected company, provisionally registered, but the purchase money not having been paid on the settling day, the broker sold them again at a loss. The customer having become bankrupt, the broker applied to prove for the loss, but was refused by the commissioner. On application by petition to the Court of Review, the petitioner was allowed to go before the commissioner to establish his proof. *Ex parte Barton*, 4 Carrow & Oliv. 371.

#### CALLS.

See *Infant Shareholder; Legacy of Shares*.

#### COVENANT.

See *Injunction*.

#### DEPOSITS, RECOVERY OF.

*Rights of shareholders.—Fraudulent misrepresentation.—Conditional allotment.—New trial.*—Certain persons issued a prospectus for a railway company, stating the capital to be 3,000,000*l.* in 120,000 shares of 25*l.* each; and that in case parliament should not sanction the undertaking, the money deposited, minus the expenses attending the project would be returned. The plaintiff sent a letter of application for shares in the form given by the prospectus. To this letter he received a written answer allotting him 60 shares, but conditionally upon the deposit being paid before a certain day, in default of which, the shares would be forfeited. Prior to the day fixed for payment of the deposit, the committee published an advertisement giving notice that they had completed the allotment, and stating, by way of apology to disappointed applicants, that they



had been obliged to give a preference to those locally interested. Evidence was given that plaintiff saw this advertisement, and that he subsequently paid his deposit. Notwithstanding that application had been made for 120,000 shares, 58,000 only were allotted. Afterwards the plaintiff executed the subscription deed, which gave power to the committee to pay the expenses out of the deposits. The plaintiff attended a meeting of shareholders on 15th Dec. The deposits, except 400*l.*, being expended, and there being no funds for making the necessary parliamentary deposit, a resolution was proposed for a further allotment of shares. The plaintiff objected, and moved as an amendment that the deposits should be returned. This amendment the chairman did not put to the meeting. The undertaking was afterwards abandoned. The plaintiff brought an action against one of the managing committee to recover the money he had paid as a deposit on the shares allotted to him.

*Held*, 1st, That there was no contract binding on the plaintiff, the allotment being in a company having a less capital than that in which shares were applied for, and the letter of allotment also being conditional, and not a simple acceptance of the plaintiff's proposal.

2ndly, That the evidence warranted the jury in finding that there was a fraudulent misrepresentation by the advertisement; and that the misrepresentation so made was a material inducement to the plaintiff to pay his money; consequently, that the subscription deed was no answer to the action.

3rdly, That, notwithstanding the plaintiff's attendance at the meeting of the 15th Dec., he was in a condition to maintain the present action.

4thly, That the absence of any opinion by the judge at the trial, whether the notice of application and allotment did or did not constitute a binding contract, was no ground for a new trial, that being a question of law for the court, and not of fact for the jury. *Wontner v. Shairp*, 4 Carrow & Oliv. 542.

#### DEVIATION.

See *Plans deposited*.

#### DIRECTORS' POWERS.

*Pledging funds for projects not authorized by their act.*—*Assent of majority not binding on minority.*—*Affidavit.*—*Injunction.*—The managing directors of a railway company, with the view of increasing the traffic on their line, entered into a contract with a steam packet company, that they would guarantee the proprietors of the steam packet company a minimum dividend of 5 per cent. on their paid-up capital, until the company should be dissolved, and that upon a dissolution, the whole paid-up capital should be returned to the shareholders in exchange for a transfer of the assets and properties of the steam packet company.

One of the shareholders filed a bill on behalf of himself and all other shareholders who should contribute, except the directors, against the company and the directors, and obtained

an injunction *ex parte* to restrain the completion of the contract.

*Held*, on motion to dissolve this injunction, that an objection for want of parties to a suit so framed was not sustainable. That directors have no right to enter into, or to pledge the funds of the company in support of any project not pointed out by their act, although such project may tend to increase the traffic upon the railway, and may be assented to by the majority of the shareholders, and the object of such project may not be against public policy. That acquiescence by shareholders in a project for however long a period, affords no presumption that such project is legal.

That an objection, stated by affidavit, and remaining unanswered, that the plaintiff was proceeding at the instigation and request of a rival company, did not deprive him of his right to an injunction, and the motion to dissolve the injunction was refused with costs. *Colman v. Eastern Counties Railway Company*, 4 Carrow & Oliv. 513.

#### FOREIGN RAILWAY COMPANY.

*Bubble railway company.*—*Demurrer.*—*Foreign and English law.*—A purchaser of scrip in a projected Spanish railway company filed his bill against the provisional committee of that company, praying that an agreement with a promoter of the railway, whereby he was to receive a large sum out of the subscribed funds of the company, might be declared void, and also praying a general account of the affairs of the company.

The bill having made a case against the directors from which it would appear that the scheme was a fraud upon the plaintiff, and that the company was in fact a bubble company, a demurrer to the bill for want of equity was allowed, on the ground that the plaintiff having made out a case of fraud against the defendants, he was not entitled to the detailed relief sought by his bill.

*Semble*, That where a bill contains averments as to the effect of certain articles of a foreign law, but is silent as to others, the court will presume that the foreign law only differs from the English in the particulars stated. *Hurvey v. Collett and others*, 4 Carrow & Oliv. 387.

#### INFANT SHAREHOLDER.

*Calls.*—The plea of infancy is not of itself an answer to an action for calls on a railway company under the 8 & 9 Vict. c. 16.

*Quare*, Whether to an action for calls, brought under that statute, any other defence can be set up than one of those mentioned in the 27th section of that act. *The Proprietors of the Cork and Bandon Railway Company v. Cazenove*, 34 L. O. 464.

#### INJUNCTION.

*Covenant.*—*Legal rights.*—*Balance of injury.*—The court below having granted an injunction, pending the decision of a case sent for the opinion of a court of law,

*Held*, by Lord Chancellor, on motion to dissolve the injunction, that the plaintiff's equity

depending on the legal effect of a covenant, had no *locum standi* in a court of equity to apply for an injunction. That in cases of this sort, it is the duty of the court to put matters in a course of legal inquiry, in order to establish the validity of the legal right before it grants an injunction, and in the meantime to make such order as will secure to either party what he may ultimately be found entitled to.

That, as the loss in one case could be ascertained, but the loss in the other, if the injunction continued, could not be ascertained, or compensation given, the injunction should be dissolved, the company undertaking to pay such sum of money by way of damage, as the court should direct, and giving security.

Where the interference of the court depends on a disputed legal right, the court will not leave it to the option of a defendant to prepare a case or not as he may think proper, for the purpose of taking the opinion of a court of law, but for its own security, will order a case to be prepared to be settled by the Master, if parties differ. *Rigby v. Great Western Railway Company*, 4 Carrow & Oliv. 491.

And see *Directors' Powers ; Managing Committee ; Parliamentary Deposit ; Payment of Deposits*.

#### INVESTMENT OF MONEY IN LAND.

1. *Construction of 8 & 9 Vict. c. 18, s. 80.—Costs.*—Under the 8 & 9 Vict. c. 18, s. 80, the court is authorized, upon an application for that purpose, in giving the costs attendant upon the investment of money in two distinct purchases of land, unless it should be shown that such investment was not a desirable one. *Ex parte Martin*, 34 L. O. 463.

2. Where a sum of money is in court to be invested in land, the court will order a reference as to a proposed investment, but will refuse to make any prospective order as to any other investment in the event of the one proposed being rejected. *Ex parte Humphrey, re Oxford, Worcester, and Wolverhampton Railway Company*, 4 Carrow & Oliv. 490.

3. On a petition for investment of purchase money of lands taken by a railway company, and payment of dividends to tenant for life, the court will not, under special circumstances, dispense with the usual affidavit of the petitioner as to the goodness of title, &c. *Re The Eastern Counties Railway Company, Ex parte Hollick*, 4 Carrow & Oliv. 498.

#### LEGACY OF SHARES.

*Liability of testator's estate for unpaid calls thereon.*—A testator who at the time of his death was possessed of 50 original and 70 purchased shares in a railway, the calls whereon had not all been made, by his will gave 30 whole shares in the said railway to the trustees, for the benefit of a married woman for life, without power of anticipation, and 30 shares to B., 25 original and 5 purchased shares having been allotted by the executors to each of the legatees. *Held*, that the testator's estate was liable to pay the calls on the original and on

the purchased shares, and a sufficient sum to cover the unpaid calls was ordered to be placed to a separate account, and laid out, and the income meanwhile paid to the persons entitled to the general residue. *Jacques v. Chambers*, 4 Carrow & Oliv. 499.

#### MANAGING COMMITTEE.

*Creditor, action at law by.—Injunction.—Demurrer.*—A bill was filed by L., stating himself to be a partner in a projected company, (which afterwards failed,) against 16 of the managing committee, and against B., a creditor of the company, who had commenced an action against L. for a debt due by the company, praying an injunction to restrain the action brought by B., or by the other defendants in his name, and to restrain the committee from distributing the assets of the company, except in discharge of the debts; and praying that all proper accounts might be taken. The defendant B. demurred for want of equity, for multifariousness, and for want of parties. Demurrers overruled. *Lewis v. Billing and others*, 4 Carrow & Oliv. 414.

#### PARLIAMENTARY DEPOSIT.

1. *Injunction.—Amalgamation.—Jurisdiction of Court.*—On a bill filed, supported by affidavit charging the managing committee of the Warwick and Worcester Railway Company with misconduct and mismanagement, the plaintiffs obtained an injunction *ex parte* to restrain some of the defendants and certain other persons not defendants to the bill, from acting on an order for payment out of court to them of a sum deposited by them in the name of the said company; but, on motion to dissolve that injunction, it appearing that a portion only of the sum deposited had been contributed by the Warwick and Worcester Company, and the remainder by two companies with which the Warwick and Worcester Company had amalgamated, but against which the bill sought no relief. *Held*, that the injunction, as to the portion of the fund contributed by the Warwick and Worcester Company, should continue, but should be dissolved, as to the portion contributed by the other two companies.

That although the words of the 4th section of the 1 & 2 Vict. c. 117, are imperative, yet the inherent authority in a court of equity to repress fraud, and to exercise control over trustees, empowers it to look into the circumstances, and to decide whether the command of the legislature ought or ought not to be complied with. *Goodman v. De Beauvoir and others*, 4 Carrow & Oliv. 380.

2. *Injunction notwithstanding order under act.*—An order was made by the Vice-Chancellor of England, on petition for payment to certain persons of a sum of money deposited on behalf of a projected railway company, in compliance with the standing orders of the House of Commons; but on bill filed stating circumstances which would render it improper that such payment should be made, an injunction to restrain the parties from receiving the sum deposited, was, notwithstanding the order granted

by Vice-Chancellor Knight Bruce. *Castendeck v. De Burgh*, 4 Carrow & Oliv. 386.

#### PAYMENT OF MONEY INTO COURT.

*Mistake.—Jurisdiction.*—The assignees of *A.* and *B.*, (a creditor of *A.*) made opposing claims to a sum of money due from a railway company for work done by *A.*, the assignees having brought an action against the company to recover it. The railway company paid the sum due by them into court. The assignees proceeded to stay their action, with a view to obtain the payment to themselves of the sum in court, whereupon the company filed a bill in equity, and applied for an injunction. *Held*, that this was not a case for the interference of a court of equity. *Great Western Railway Company v. Cripps*, 4 Carrow & Oliv. 473.

2. *Costs.*—Where a railway company purchases land settled upon a tenant for life, with remainder in tail, and the purchase money is paid into court; on an application by the tenant in tail in possession to have the money paid to him, the court is not authorised by the 44th section of the act in giving him the costs of the disentailing deed, or the other costs attendant on the payment, out of the purchase money. *Ex parte Langton*, 34 L. O. 510.

#### PAYMENT OF DEPOSITS OUT OF COURT.

1. *Injunction.—Jurisdiction of court.*—The provisional committee of management of a projected railway (the South and Midland) were, by the subscription contract, invested with full power and authority to fix upon, and from time to time to alter and vary, the points or places at which the intended railway should commence and terminate, and the intermediate course, route, or line thereof; and it was, amongst other things, agreed that they should have ample power to carry all or any part or parts of the undertaking as described in the parliamentary contract into effect, and to make contracts with railway or canal proprietors, and generally to adopt all such measures whatsoever as any board or meeting or committee of management might in their judgment think necessary or expedient, or might be advised to adopt, and particularly to apply for an act, &c.

The committee having, by default of their engineer, failed to comply with the standing orders of the House of Commons, entered into an arrangement to amalgamate with another railway company (the Manchester and Poole) who had complied therewith, and to pay in the required parliamentary deposit for them, and also to pay them 8,000*l.* on account of the expenses incurred, which payment was to form an item to the credit of the South and Midland Railway Company.

The sum of 55,000*l.* was accordingly deposited in court to the credit of the Manchester and Poole Railway Company in the names of three of the directors of the first and two of the last mentioned railway company.

Some of the shareholders in the South and Midland Railway Company having protested against this arrangement, filed their bill for

an account of the deposits, &c., and also for an injunction to restrain three of the persons in whose names the parliamentary deposit had been made from prosecuting an order which they had obtained on petition for payment out of court to them of the sum deposited: *Held*, on motion for an injunction in the terms of the prayer of the bill, that the committee of the South and Midland Company had no right to destroy the individuality of their company or the original character, rights, and powers of the projectors, and that they were not justified in paying the money of their *cestui que trusts* for an indefinite demand, and so as to form an item of account between themselves and another company.

Injunction accordingly granted. *Gilbert v. Cooper and others*, 4 Carrow & Oliv. 396.

2. Under similar circumstances to those set forth in the preceding case, the Lord Chancellor granted an injunction, but without costs, against those persons only who were not directors of the original company, but refused it as to those who were. An order for payment of the deposits out of court to three of the directors of the South and Midland Company was accordingly made on another petition being presented by them to the Lord Chancellor for that purpose. *Lewis v. Cooper and others*, 4 Carrow & Oliv. 413.

#### PERMISSIVE AND COMPULSORY POWERS.

*Taking land.—Injunction.—Rival Companies.*—The defendants, a railway company, obtained an act for making certain branch railways, and it was thereby provided that nothing therein contained should extend to prejudice, diminish, alter, or take away any of the rights, privileges, powers, or authorities vested in the plaintiffs (also a railway company) under their act; but all rights, privileges, and franchises of the said company, and all the powers, authorities, and provisions in the said last-mentioned act contained were saved and reserved to them as if the defendants' act had not been passed; so always, nevertheless, that such rights, privileges, franchises, powers, authorities, and provisions be not exercised in such a manner as to prevent the defendants from compulsorily taking and using land of sufficient breadth to admit of the formation of the extensions or branches thereinbefore authorized, such extensions or branches, however, not to exceed respectively twenty-two feet in breadth at the level of the rails, with sufficient breadth for the necessary slopes.

The plaintiffs were empowered by their act to take certain lands compulsorily, and also to take certain other lands with consent. The defendants had power to take compulsorily certain lands scheduled in their act, amongst which were certain pieces of land which the plaintiffs had purchased with the consent of the owners subsequently to the date of the defendants' act.

The defendants gave notice of their intention to take under their compulsory power a

greater quantity of the pieces of land purchased by the plaintiffs than was required for the line of their railway for stations, &c., whereupon the plaintiffs filed a bill, and applied for an injunction to restrain the defendants from taking more of their land than was necessary for their line of railway.

*Held*, that the plaintiffs having occupied the ground before the defendants, were entitled to hold so much of it as was not actually wanted for the formation of the defendant's railway.

Injunction granted, with liberty to plaintiffs to bring an action to try the legal right. *Lancaster and Carlisle Railway Company v. Maryport and Carlisle Railway Company*, 4 Carrow and Oliv. 504.

#### PLANS DEPOSITED.

*Deviation.—Standing Orders.—Datum line.*—The plaintiff was the owner of a house near the public road, and connected therewith by an avenue and a lodge; a railway company deposited plans, &c., whereby it was shown that they intended to cross the plaintiff's avenue five hundred and twenty feet from the lodge under a bridge, raising the level of the roadway of the avenue only two feet, and by means of a cutting fifteen feet in depth.

The plaintiff, relying on the plans and sections, did not oppose the bill in parliament, which accordingly passed into an act.

The railway company afterwards gave notice of their intention to deviate from the original plans, and to make their cuttings sixty-one feet nearer the plaintiff's house, and to make a bridge over his avenue seventeen feet high.

On appeal from the Court of Session in Scotland, an application by the plaintiff for an interdict to prevent the company from crossing the plaintiff's avenue in any other manner than that shown by the original plans refused, notwithstanding it was shown that the measurements in the original plans had been miscalculated with reference to the datum line, and that the defendants' cuttings would, according to those plans, exceed the vertical powers of deviations given to the railway company.

*Held*, that parties are bound by what it is represented on the deposited plans and sections so far only as such plans and sections are incorporated in or specially referred to by the act.

That the court will not regard what is done under the standing orders of the house, but will only look at the act itself.

That the plans are binding to determine the level of the railway with reference to the datum line, but not to the surface level of the land over or through which the railway passes. *North British Railway v. Tod*, 4 Carrow and Oliv. 449.

#### PRELIMINARY EXPENSES.

*Action at Law.—Parties.*—The plaintiff, who was a shareholder in a projected railway company, but who had refused to pay 100*l.*, a sum fixed by the executive committee as his

share of the expenses incurred, filed his bill to restrain a creditor of the company from prosecuting an action at law against him to recover a debt in the bill, stated to have been assigned to the committee, in order that they might use it as a means of compelling payment of the 100*l.*, and also to restrain the executive committee of the company from commencing any action against him, or parting with the deposits in their hands, except in payment of the liabilities of the company, and praying that accounts might be taken of the assets and liabilities, the plaintiff offering to pay what might properly be found due by him.

The managing committee (all of whom together with the creditor were defendants) demurred for want of equity and for want of parties: *Held*, that, although a plaintiff may have a good defence to an action at law, he is not on that account precluded from proceeding in equity to restrain the action.

That the defendants must distribute the assets in their hands in discharge of the liabilities of the company, and were not justified in attempting to extort, by means of an action, an arbitrary sum which the directors had fixed as plaintiff's share of the expenses. Demurrer overruled. *Fernihough v. R. Leuder and others*. 4 Carrow and Oliv. 373.

#### PROMOTERS OF RAILWAY COMPANY.

*Gratuity.—Agreement.—Demurrer.*—Plaintiff, the promoter of a railway project, entered into an agreement with a committee formed for carrying the same into effect, and consisting of 13 persons, (*A., B., C., D., E., F., G., H., I., K., L., M., and N.*) that he should receive 1,500 shares (deposit free) for promoting and launching the company, and should be retained as their solicitor and receive the amount of costs and expenses incurred when there should be sufficient funds in hand for that purpose.

A subscription deed was entered into, whereby all the members of the original committee (except *A.*), together with *O.*, were nominated as the provisional committee of the company, and the usual powers of removing and filling vacancies were given them, and it was declared that the majority of votes present at any meeting of the committee should bind the rest and also the shareholders.

The provisional committee removed *I.* and *K.*, two of the members of the original committee, and nominated *P.* and *Q.* in their places.

The terms of the original agreement were afterwards varied, and when varied were consented to by the committee and entered in the minute book of the company.

The bill was filed against all the members of the original and provisional committee, except *A., I., and K.*, for the specific performance of the agreement as varied for restraining the members in whose hands the funds of the company were, from parting with any of them until plaintiff's demands had been satisfied, and for a declaration that plaintiff was entitled to a lien thereon.

The bill (among other things) charged that the stipulation as to the retainer of the plaintiff as the solicitor of the company, had been long since abandoned by both parties.

*Held*, by the Vice-Chancellor of England, that a demurrer, for want of equity, and for want of parties, be overruled.

That an agreement containing a stipulation which might vitiate it becomes perfect, and such as a court of equity will sanction when plaintiffs mutually release each other from that stipulation.

*Held*, by the Lord Chancellor on appeal, that the demurrers be allowed, on the ground that the bill contained no allegations to show that the defendants had any scrip to deliver, but rather statements from which the contrary might be inferred. *Columbine v. Chichester and others*, 4 Carrow and Oliv. 432.

#### SCRIP SHARES.

See *Bankrupt*.

#### SHAREHOLDERS, ORIGINAL.

*Loan Notes*.—By a resolution of the London and Brighton Railway Company, the directors were empowered to raise 300,000*l.* by an issue of loan notes payable at the end of 5 years, bearing interest in the mean time with an option to the holders to convert them, at the expiration of not more than 3 years, into quarter shares, under an act to be obtained for that purpose. The directors published an advertisement to the above effect, and thereby fixed the 10 Feb., the 15 April, and 15 July, for payment of the instalments of the sums allotted, and interest was to commence from time of payments. On payment of the whole sum the company delivered to the payer a loan note, whereby they promised to pay the bearer 100*l.*, and interest half yearly, on August 15 and February 15, and on this note was an indorsement stating that an application was intended to be made to parliament for an act under the terms of which the bearer would be entitled on 15th Feb., 1845, provided previous notice should be given to convert his loan note into quarter shares of the company.

An act was obtained, and thereby the directors were empowered by an order of a general meeting to raise sums sufficient to pay off money borrowed, the sums raised to be divided into distinct shares, and to be appropriated as by the order of such meeting should be determined. By a general meeting the shares authorized by the act were ordered to be raised and allotted among the holders of loan notes in the manner and on the terms directed by the act.

The plaintiffs did not declare their option until June 1845, but nevertheless claimed to have shares allotted to them in exchange for their loan notes, and on the company refusing filed their bill: *Held*, that the original contract between the parties was not varied by the subsequent act and resolution.

That the plaintiff's not having protested against the indorsement, nor given notice of their desire to convert their loan notes into

shares until the day for declaring that option had passed, were not entitled to have shares allotted to them in exchange for their loan notes. Bill dismissed with costs. *Campbell v. London and Brighton Railway Company*, 4 Carrow and Oliv. 475.

See *Assignment; Deposits*.

#### STAMP.

See *Allotment*.

#### TITHES COMPENSATION.

*London assessment, how construed*.—Under the Act for Tithes in London, (37 Hen. 8, c. 12,) the plaintiff, rector of St. O., was entitled to claim 2*s.* 9*d.* in the pound upon the rent reserved, in lieu of tithes, on all houses in his parish. A railway company, under the powers of their act, purchased and took 33 houses in the said parish, being bound by the 33rd section of one of their acts to pay such yearly sums in respect of such houses, according to the last assessments thereof to the 25th March last, as would be equal to the loss in tithes which the rector might sustain for want of occupiers by reason of such taking.

*Held*, that the assessment mentioned in the Railway Act does not necessarily mean the assessment to the relief of the poor, but refers to the annual charge which the rector had made at the time mentioned in the act in respect of the annual value of the house as fixed by agreement or otherwise between himself and the occupier.

That the right of the rector to claim tithes was not limited to the amount of the annual value which at the time of taking was payable in respect of the houses so taken, but in the event of the company rebuilding houses producing a larger rental than those they had originally taken, such houses would be liable to a new assessment.

That where no agreed annual value existed, the sum received by the rector for tithes must be presumed to be taken on the real annual value. *Letts v. Blackwall Railway Company*, 4 Carrow & Oliv. 530.

### BUSINESS OF THE COURTS.

#### Exchequer of Pleas.

Wednesday, Nov. 17, 1847.

THIS Court will hold Sittings on Wednesday the 1st, and Thursday the 2nd December, and on Monday the 6th of December next, and on every following day thenceforth, until, and including, Saturday 11th December next, and at such Sittings will proceed in disposing of the business then pending in the paper of Demurrers, and in the paper of New Trials.

FRED. POLLOCK.  
J. PARKE.

E. H. ALDERSON.  
R. M. ROLFE.

#### Central Criminal Court.

THE Sessions for the ensuing year will take place on the following days:—

|                        |                       |
|------------------------|-----------------------|
| Monday, Nov. 22, 1847. | Monday, May 15, 1848. |
| Monday, Dec. 13        | Monday, June 12       |
| Monday, Jan. 3, 1848.  | Monday, July 3        |
| Monday, Jan. 31        | Monday, August 21     |
| Monday, Feb. 28        | Monday, Sept. 18      |
| Monday, April 3        | Monday, Oct. 23       |

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 27, 1847.

‘Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

### OPENING OF PARLIAMENT. CONTEMPLATED MEASURES RE- LATING TO THE LAW.

#### APPEALS IN CRIMINAL CASES AND FROM THE COUNTY COURTS.

HER MAJESTY'S speech upon the opening of parliament contains no reference to any proposed measures affecting the administration of the law, but it is very currently reported and believed in legal circles, that a bill has been prepared, and is to be introduced by the law officers of the Crown, at an early period of the session, establishing a court of appeal in criminal cases, and also giving a power of appeal to the superior courts from the decisions pronounced by the judges of the New County Courts. So far as we can ascertain, the principle of both the proposed measures will meet with all but universal approbation. The details will, of course, require the exercise of great circumspection and caution, combined with an extensive and accurate practical knowledge.

As may be supposed, the contemplated changes stand upon a totally different footing. In criminal cases, there is now an appeal from the verdict of a jury and the sentence of a judge to the Secretary of State for the Home Department, and in such cases, when any question of law arises which the presiding judge conceives admits of any reasonable doubt, it is usual to reserve such a question for the consideration of all the judges. Practically, therefore, there is an appeal in criminal cases upon every question of law and of fact, although that appeal is not granted *ex debito justitiæ*.

and is in many respects imperfect and objectionable. The appeal to the Home Secretary, although resorted to from necessity, can hardly be considered constitutional, and is far from being satisfactory in any case. The enormous power with which the individual who holds the seals of the Home Department is entrusted of pardoning convicted criminals, or mitigating the severity of their sentences, being exercised without any disclosure of the motive grounds, or circumstances, necessarily lacks the sanction and support of public opinion. When we hear that an offender is pardoned, or a sentence commuted, we know not whether the result is to be ascribed to the conviction that the alleged offender is innocent, or that a doubt has been created as to his guilt, or simply that the applications in his behalf have been urgent and persevering; or when we learn that an appeal to the Home Secretary to reverse a sentence has been ineffectual, how can we be sure that the fiat which consigns a fellow subject to ignominy — perhaps to death — proceeds from a confidence in the justice of his sentence, or an ignorance of the merits of his case? The system of private appeals to an officer of the executive government to correct the inevitable misapprehensions, errors, and accidents which must occasionally occur in the administration of the criminal law, is repugnant to the spirit of our institutions, and is liable, if not to abuse, at all events to abundant misconstruction. Of late years, we have reason to believe, that applications of this nature to the Secretary of State have increased in number and urgency, to an extent and degree which interferes materially with the performance of the other public duties

which devolve upon this exalted functionary. The weight of responsibility which the system now creates is too great to put upon any man who is sufficiently impressed with the gravity and importance of the duties it imposes on him; and we anticipate all political parties will concur in thinking that a measure which relieves the Secretary of State from the necessity of considering appeals from the criminal courts—apart from its intrinsic merits—cannot fail to be beneficial to the public service. The reservation of questions of law by the judges in criminal cases is also open to objection. It depends altogether upon the discretion of the judge whether he will reserve any particular question of law or not. Instances have frequently occurred, in which judges have entertained no doubt upon questions of law which have ultimately been decided by a competent authority in a manner adverse to the ruling of the judge. A remarkable instance occurred not long since on the Western Circuit, when several persons were actually left for execution, who were finally adjudged not to have committed any offence. Even when a question is reserved by a judge for the consideration of his learned brethren, the decision cannot be considered altogether satisfactory, because the reasons and grounds of the decision are not publicly stated. An instance has recently occurred which furnishes a remarkable example. A person named Garbett was tried at the Old Bailey Sessions in the present year for forging the acceptance of one Booth to a bill of exchange. At the trial, the counsel for the prosecution was permitted to give in evidence the examination of the prisoner as a witness on the trial of a civil action at the previous Kingston assizes, from which it appeared that the prisoner, under compulsion of the judge, had made certain admissions all but conclusive as to his having written Booth's name as the acceptor of the bill. The prisoner was convicted, but judgment was reserved until the opinion of the judges was obtained as to whether the evidence given by the prisoner at Kingston, upon being admonished by the judge to answer the questions put to him, was properly received against him on the criminal prosecution. The case was fully argued in Trinity Term last, and several points of great importance were raised, as well on behalf of the prisoner, as by the counsel who appeared to support the conviction. It was contended, amongst other things, that the prisoner ought not to have been compelled to answer questions of a criminatory character, and if he were so compelled, that

the answers given by him could not afterwards be given in evidence on a criminal prosecution. It was said that the prisoner's examination was inadmissible,—1st, because it was given on oath; 2ndly, because he was not cautioned before answering the questions put to him; and 3rdly, because when he appealed to the learned judge for protection, he was told he must answer the questions, so that his answers were not voluntary, but given under duress. On the other hand, it was said, that although the law does not oblige a man to criminate himself, it allows him to do so, and if a witness waives his privilege he binds himself to state all he knows: in other words, that the privilege is to be silent, not to garble facts by disclosing a part of them only. In support of these various propositions a host of legal authorities were cited of greater or less weight and applicability. The judges took time to consider the questions submitted to them from Trinity Term until Saturday last, when it was intimated, to the parties concerned, that a majority of the judges were of opinion that the conviction could not be sustained, and the prisoner, who had been in custody since May, was ordered to be discharged. No reasons were assigned for the resolution of the judges, nor is it usual in such cases, so that it may never be authoritatively known upon which of the points raised by the prisoner's counsel the decision proceeded, and the case does nothing to settle the criminal law, or render it more certain. Such a state of things is obviously unsatisfactory, and we confidently hope to find this defect in the law fairly grappled with and overcome, by the government measure which has been prepared.

The proposed appeal from the decisions of the County Courts is a substitute for nothing. Where the judges of the new courts exceed the extensive authority conferred upon them by the statute, (9 & 10 Vict. c. 95,) the superior courts will interfere by writ of prohibition, and this proceeding has been adopted in several cases brought under the notice of the courts of law during the Term which has just concluded. When the judges of the County Courts confine themselves within the limits of their jurisdiction, let their decisions be ever so monstrous, absurd, or unjust, the injured party is left without redress or appeal. It is scarcely necessary to add, that, in common with nearly every person who has considered the constitution of the new courts, or had any opportunity of becoming acquainted with their practice and proceedings, we deem it desirable that such a state of things



should be put an end to as speedily as the forms of parliament will permit. Let us repeat, however, that if the bill for the amendment of the stat. 9 & 10 Vict. c. 95, be confined to a provision affording the suitors a power of appeal, it will very soon be found necessary to introduce other bills for the amendment of that statute. All experience attests, that a tithe of the errors committed by a judge at a trial can never afterwards be remedied by the decision of a court of appeal. The appointment of the judges must be reconsidered, and, above all things, measures must be taken to induce respectable, intelligent, and independent professional men to attend the new courts. The presence of practitioners of this description affords at once a restraint and a support, useful to even the best judges, and all important to the true interests of the public.

#### NOTICES OF NEW BILLS.

To extend the time for the Purchase of Land and completion of Works by Railway Companies.—Chancellor of Exchequer.

For the better Prevention of Crime and Outrage in certain parts of Ireland.—Sir Geo. Grey.

To amend the Laws relating to Roman Catholic Charities.—Mr. Anstey.

For the further Repeal of Penal Enactments against Roman Catholics.—Mr. Anstey.

The total repeal of the Punishment of Death.—Mr. Ewart.

Amendment of the Coroners Bill.—Mr. Grantley Berkeley.

#### TAXATION OF SUITORS.

Mr. Romilly has given notice of motion for the 2nd December for a select committee, similar to that of Mr. Watson in the last session.

It is much regretted by all persons interested in this important question, that Mr Watson is not in the house. Mr. Romilly, however, will, no doubt, ably conduct the inquiry into the enormous fees in the Court of Chancery; and we hope some eminent member of the Common Law Bar will, as far as possible, supply Mr. Watson's place. We hope, however, that the learned gentleman will resume his seat or find another.

#### PRIVATE BUSINESS OF THE HOUSE OF COMMONS.

The House will meet every Wednesday, at 12 o'clock at noon, for private business, petitions and orders of the day, and continue to sit till 6 o'clock, unless previously adjourned.

The business under discussion and any business not disposed of at the time of such adjournment, will stand as orders of the day for the next sitting.

## STATE OF BUSINESS IN THE COURTS.—LEGAL INTELLIGENCE.

THE Term has concluded, and, as we anticipated, there has been a deficiency of *new business* in all the courts. In the equity courts there was an unusual degree of dullness. The Lord Chancellor has been prevented from sitting for several days from indisposition, and the Master of the Rolls was for some days without any causes ready for hearing. In the common law courts the motions for new trials, in cases tried at the sittings and circuits, occupied the first week of the Term, and little progress has since been made in diminishing the arrears. The Court of Queen's Bench and the Court of Exchequer have appointed lengthened Sittings after Term, under Lord Denman's Act, (2 Vict. c. 32,) for the purpose of disposing of arrears. The judges of the Court of Common Pleas have also deemed it necessary to hold additional Sittings for four days, as the old New Trial Paper in that court has not been reduced during the Term, and there has been a considerable addition to it in consequence of the number of rules granted within the first week of Term.

A trial at bar is appointed to take place in the Court of Exchequer, on Friday the 3rd December, in a case of *Baron v. The Hon. Capt. Denman*, which has been long depending, and which involves the legality of proceedings adopted by the captain of a British cruiser in the supposed performance of duties connected with the suppression of the traffic in slaves on the coast of Africa. The trial at bar was fixed at the instance of the Attorney-General, acting for the Crown and representing the defendant in the action.

We understand that there is to be a general gaol delivery for the counties of York and Lancaster at York and Liverpool, to commence about Saturday the 11th Dec. It is stated that Mr. Justice Patteson and Justice Coleridge will preside at York, and Mr. Baron Alderson with Baron Rolfe at Liverpool.

The Lord Chancellor's illness has occasioned many speculations as to his probable successor in the event of his lordship's retirement from continued illness. Lord Campbell, Mr. Baron Rolfe, the Attorney-General, and Mr. Romilly, have been all mentioned as holding positions in respect of the government which would render their elevation to the Chancellorship not improbable. Lord Cottenham's expected restoration to health and resumption of his



judicial duties will put an end to surmises which can have no solid foundation, and the fulfilment of some of which could scarcely be regarded in any other light than as a public misfortune.

## BANKRUPTCY AND INSOLVENCY LAW.

It is a very singular condition of things to find merchants, bankers, and traders meeting together in the vast metropolis of London to denounce the working of statutes, not made in remote times, or rendered obsolete by new states of society, but enacted within the last few years, and during the influence of the much-boasted learning and experience of our numerous law reformers! The abolition of arrest on mesne process and the various changes in the Law of Debtor and Creditor within the last 10 or 12 years, thus end in a loud outcry in the city of London against acts of parliament which seem to have been passed for the express relief of fraudulent debtors. Attempts have indeed been made very recently to retrace the erroneous steps in the important branches of the Law of Bankruptcy and Insolvency, for the purpose, on the one hand, of protecting the honest and unfortunate debtor from ruinous expenses and harsh oppression; and on the other, affording prompt and efficient means of coercion against the reckless and fraudulent speculator. But these efforts have been hitherto unavailing.

An active and influential society has however been formed amongst the commercial classes for the purpose of effecting an amendment of that "crude legislation" which has thrown so much discredit on law reform. A public meeting was held on the 22nd instant at the London Tavern, Mr. Masterman, M. P., in the chair, at which many eminent merchants and traders attended.

The report of the committee was read by Mr. Curtis, the solicitor, who is Honorary Secretary of the society. Important letters were read from Mr. Commissioner Fane, and from the Chambers of Commerce of Manchester, Hull, Bristol, Norwich, and Greenock. Mr. Forster, M. P., Mr. Amory, (the solicitor), Mr. Mitchell, M. P., Mr. Alderman Sidney, Baron Rothschild, M. P., Mr. Manning, Mr. Hawes, Mr. Travers, and other gentlemen of eminence, addressed the meeting in support of various resolutions for carrying out the objects of the society.

The following is the report of the committee:—

## FOURTH REPORT OF THE COMMITTEE FOR EFFECTING AN AMENDMENT OF THE LAWS RELATIVE TO BANKRUPTCY AND INSOLVENCY.

"YOUR committee have to submit to their subscribers and the commercial public, the fourth report of their proceedings to obtain a reform of the laws relating to insolvency. They have availed themselves of the early meeting of parliament to call a public meeting to consider this important subject, at a period when the mercantile and trading classes are so severely suffering from the depressed state of credit; believing it to be an appropriate time for pressing upon the attention of the legislature and the government the necessity of efficient measures for promoting and securing the interests of commerce, by the removal of those facilities which the law now affords to dishonest and improvident debtors to injure and frequently to ruin their unfortunate creditors.

"A brief outline of the progress that has been made in this branch of legislation since the first appointment of your committee in 1842, may be useful. At that time a bill for the amendment of the Law of Bankruptcy had been introduced into the House of Lords by the Lord Chancellor Lyndhurst. Its principal object was the establishment of district courts of bankruptcy throughout the country, with their separate commissioners and official assignees, similar to that which had been previously existing in London; but it also contained the important provision for taking from the creditors, and vesting in the commissioner, the power of granting or refusing the bankrupt's certificate. The numerous interests in the country likely to be affected by the alterations proposed by this bill induced a powerful opposition to it, which your committee were successful in overcoming; and also, though but partially only, in introducing provisions for the fraudulent debtor, and for better securing the interests of creditors, which had so materially suffered by the then recent act by which arrest upon mesne process was abolished.

"The general indignation which followed the reckless legislation of the 7 & 8 Vict., known as Lord Brougham's Act, by which imprisonment of non-paying debtors owing sums under 20*l.* was entirely done away with, caused the re-appointment of your committee, for the purpose, not only of getting rid of this direct encouragement and reward of fraud, and other vice, but also for carrying into effect the strongly expressed demand of the commercial classes for further improvement in these laws.

"With this object, your committee introduced in the House of Commons, in the session of 1845, and again in 1846, a bill calculated to carry their views partially into effect; but the general want of knowledge on this subject prevented their attaining any further result than the alteration of the Small Debts Act, to which they added a provision of the highest importance, viz., the power to imprison for debts under 20*l.* which had been contracted in fraud, wilful extravagance, or improvidence, such im-

prisonment (not exceeding 40 days) not operating as a release of the debt.

"Your committee can hardly exaggerate the value of the principle thus admitted and legalized. They consider it the turning point in the progress of legislation; men are to be punished, not because they are in debt, or because they cannot pay, but because they have been guilty of acts, wilful and mischievous, by which the security of commercial property is endangered, lost, or annihilated, and society at large harassed and baffled in the needful transactions of commerce. This great principle thus established, and further acknowledged by the County Courts Act, it is the object of your committee to extend (by regulations of wholesome stringency) to the whole law of debtor and creditor, and to apply, with scrupulous regard to justice, to all insolvents who may wilfully become so; and it is their full belief that if such provisions were extended, a rapid and decided improvement in the habits and opinions of the mercantile class would result; and that those periods of commercial ruin which destroy the many innocent with the few guilty would prove less frequent and severe, and, in the end, cease altogether.

"The County Courts Act, by which the Small Debts Act of 1845 has been carried into effect, is a further advance in the right direction. Relief to honest men claiming their own has been rendered easier, and as time and experience shall lend their aid in working will doubtless become more and more efficient, and its chief defect—the cost of procedure—be reduced. Justice, under an efficient administration of the law of debtor and creditor, must not only be quick and ready, but it must be cheap, or there will be a denial of justice to the multitude.

"The recommendation contained in the report of your committee of the 16th of February, 1846, for the removal of insolvency cases from the Court of Bankruptcy, has been effected by an act of last session, by which the Insolvent Debtors Court has now jurisdiction over all applications within the London district, whilst those from other parts are assigned to the judges of the New County Courts. This has but very recently come into operation.

"Since the meeting of the subscribers in February last, your committee have lost no opportunity of enforcing on members of parliament and on the public the declaration of grievances then made. They have presented petitions to both houses of parliament, have advertised, printed, and extensively circulated essays and tracts tending to develop truth, and to instruct the public mind, and to urge the demand for an efficient amendment of these laws; and your committee have much pleasure in acknowledging the valuable assistance they have received from Mr. Commissioner Fane, whose efforts have been unceasing in the promulgation of correct principles on this subject.

"The only attempt made by the government to improve these laws during the last session was the introduction by the Lord Chancellor

of a bill to consolidate the existing acts relating to bankruptcy, to abolish the Court of Review, transferring its jurisdiction to the Court of Chancery, and to reduce the number of commissioners of the court. Some of the provisions of the bill of your committee were introduced, but others, which they considered of the greatest importance, were omitted. With the above exceptions, the proposed measure was little more than a consolidation and re-enactment of the present laws. The mere consolidation, however, would be a measure of great value, although alone quite inadequate to the wants of the commercial classes.

"Greatly dissatisfied with this state of the question, your committee made the strongest representations to the government, and, after much delay, obtained an interview, not with the Lord Chancellor, but with Mr. Vizard and Mr. Ayrton, his secretary and registrar, the result of which was most unsatisfactory, your committee being unable to convince those gentlemen of the truth and immediate practical necessity of adopting the principles of legislation so often insisted on by the commercial classes. Under these circumstances, your committee was obliged to seek other assistance, and they have the pleasure to report that Lord Ashburton, whose experience and knowledge render him so eminently fit to judge of the principles advocated by your committee, expressed his hearty concurrence therein, and promised to support them in the House of Lords; and the Hon. Edward P. Bouverie, who had with great zeal and quick apprehension kindly undertaken the charge of the committee's bill, agreed to bring it before the House of Commons, and to urge on the government the necessity of its adoption. This he was unfortunately prevented by illness from doing until the close of the session.

"No further steps were taken last session by the government with the Lord Chancellor's bill; but Lord Brougham succeeded in carrying a short but a questionable act for the abolition of the Court of Review, transferring its jurisdiction to the Court of Chancery, and also for the removal of the insolvency cases from the Court of Bankruptcy.

"In thus recording the amendments which have been made during the last five years in the Law of Debtor and Creditor, your committee express their regret that, notwithstanding their vigilance and labour, so little has really been done. But it is their opinion that if a vigorous effort be made during the coming session, more may be accomplished than during the whole past period. Great subjects of controversy are settled; there is time for practical measures; the government seems honestly inclined to legislate; old errors have been exploded, and true principles have been seized by the public mind, which will not be easily abandoned to the most subtle oratory. The gigantic losses by insolvency, and by the depreciation in value of commodities, the result of an almost universal disorganization of commercial society; the state of distrust and alarm

that pervades the nation, no man daring to trust his neighbour—all combine to render this a time most favourable for bankruptcy reform. In confirmation of these views, your committee are pleased to announce that the first advertisement for this meeting was followed by a communication to them from Mr. Vizard, that the subject was under the Lord Chancellor's consideration, and that his lordship desired to receive information from the traders of the country, which your committee cannot but think the vacillating course of legislation during the last few years proves to be necessary.

"Your committee beg to express their thanks for the attention paid to their representations by Lord Ashburton, and for his kind promise of support in the House of Lords; and also to the Hon. E. P. Bouverie, M. P., for the readiness with which he entered into their views, and for the assistance he has afforded them.

"Your committee submit the treasurer's statement of the receipt and expenditure of the funds since the last meeting in February.

"Your committee, in conclusion, most strongly urge the necessity of one resolute effort being made to accomplish the desired objects. For this much assistance is required, demanding a liberal expenditure; the daily and weekly press, already well-disposed to discuss the subject, must be supplied with materials; and the merchants of the various provincial towns must be urged to strengthen the central committee by public meetings and by approving resolutions. Every parliamentary district must enforce on its representatives that it will no longer be trifled with by any ministry or political party. On this subject, which, irrespective of all political differences, affects so nearly the welfare of the whole middle class, and which destroys or perverts a sum of hard-earned treasure quite equal to the whole of the national revenue, and nearly double that of the interest of the national debt, every public man should instruct himself; and every merchant, and every shopkeeper and retailer, should insist on their representatives advocating a code of laws which, while it will effectually shield from undeserved suffering every unfortunate man, will give the utmost security to commercial property, now exposed to the greatest risk by a confused and demoralizing body of laws—laws which a body of merchants and traders, on the occasion of our last meeting, declared to be 'a disgrace to our age and country—as permitting under their shelter deceit, reckless trading, extravagance, dishonesty, and every species of fraud to be practised with impunity, and as steadily undermining the commercial morality of the country;' an opinion which the events of the last few months have proved to be well-founded.

"By order of the Committee,

"JOHN CURTIS, *Hon. Sec.*

"Nov. 22, 1847."

## TOWNS IMPROVEMENT CLAUSES ACT.

10 & 11 VICT. c. 34.

[Concluded from p. 56, *ante*.]

### Ventilation.

110. Before beginning to build any building intended to be used as a church, chapel, or school, or a place of public amusement or entertainment, or for holding large numbers of people for any purpose whatsoever, within the limits of the special act, the person intending to build the same shall give 14 days notice in writing to the commissioners, and shall accompany such notice with a plan and description of the manner proposed for its construction, with respect to the means of supplying fresh air to such building; and no person shall begin to build such building until the manner proposed for its construction, with respect to the means for supplying fresh air, have been approved of by the commissioners; and in default of sending such notice, or if any such building be erected without such approval, the commissioners may cause such building, or such part of it as they consider necessary, to be pulled down or altered at the expense of the owner, and any expense incurred by the commissioners in so doing may be recovered as herein-before provided with respect to ruinous or dangerous buildings taken down or repaired by the commissioners.

111. If commissioners fail to signify their approval of plan within 14 days, party may proceed to build.

112. Persons may appeal against determination of commissioners.

113. Cellars in courts not to be occupied as dwellings after letting prohibited.

114. No cellars under the height of seven feet from the floor to the ceiling to be let as dwellings.

115. Penalty on letting such cellars as dwelling places.

### Lodging Houses.

116. It shall not be lawful to keep or use as a public lodging house within the limits of the special act, any house, not being a licensed victualling house, which shall be rated to the relief of the poor on a less sum than 10*l.*, nor in any case unless such house shall have been registered as a lodging house in a book to be kept by the commissioners for that purpose; and every house shall be deemed a public lodging house within the meaning of this act in which persons are harboured or lodged for hire for a single night, or less than a week at one time, or any part of which is let for any term less than a week.

117. Commissioners to keep a register of lodging-house keepers, and make rules for promoting cleanliness and ventilation.

118. Penalty on lodging-house keepers, not complying with the provisions of the act.

### Lighting.

119. Commissioners may contract for lighting the streets.

120. For ascertaining price to be paid for gas in case of dispute.

*Water.*

121. Power to commissioners to construct public cisterns and pumps for supply of water to baths and wash-houses. Commissioners not to construct such new works without approval. 9 & 10 Vict. c. 106.

122. Commissioners may contract for supply of water.

123. For ascertaining price to be paid for water in case of dispute.

124. Commissioners to cause fire-plugs, &c. to be provided and maintained.

*Slaughter-Houses.*

125. Commissioners may license slaughter-houses, &c.

126. No new slaughter-houses in future to be erected without a license.

127. Existing slaughter-houses, &c., to be registered.

128. Commissioners may make bye-laws for regulation of slaughter-houses, &c.

129. Justice may suspend license of slaughter-houses, &c. in addition to penalty imposed.

130. Penalty for slaughtering cattle during suspension of license, &c.

131. Officers may enter and inspect slaughter-houses, &c.

*Special Order.*

132. Where by this or the special act the commissioners are empowered to do anything by special order only, it shall not be lawful for them to do such thing, unless the resolution to do the same have been agreed to by the commissioners in some meeting whereof special notice has been given, and has been confirmed in a subsequent meeting held not sooner than four weeks after the preceding meeting, and which subsequent meeting has been advertised once at least in each of the weeks intervening between the two meetings in some newspaper circulating within the limits of the special act, and of which special notice in writing has been given to each of the commissioners.

133. Final resolution not to be carried into effect for one month, nor then if a majority of the rate-payers remonstrate against the same.

134. Commissioners may purchase slaughter-houses, &c.

135. And places for public recreation.

136. And public bathing places and drying grounds.

137. That the number of baths for the use of the working classes in any building provided by the commissioners shall not be less than twice the number of the other baths of any higher class.

138. The commissioners may from time to time make such reasonable charges for the use of such baths, bathing places, wash-houses, and drying grounds as they think fit, but as regards the working classes, not exceeding the charges, if any, mentioned in the special act, unless for the use of any washing tub or trough for more than two hours in any one day, in

which case any charge may be made which the commissioners deem reasonable.

139. Recovery of charges for the use of baths, &c.

140. Publication of bye-laws in regard to baths, &c.

141. Sale of baths, &c., on discontinuing them.

142. Application to be made to parliament if additional powers necessary.

*Clocks.*

143. Power to commissioners to provide public clocks.

*Execution of Works by Commissioners.*

144. Commissioners empowered to enter upon lands for the purposes of this act.

145. Penalty on persons obstructing commissioners in their duty.

*Execution of Works by Owners.*

146. Where under this or the special act any notice is required to be given to the owner or occupier of any building or land, such notice addressed to the owner or occupier thereof, as the case may require, may be served on the occupier of such building or land, or left with some inmate of his abode, or, if there be no occupier, may be put up on some conspicuous part of such building or land; and it shall not be necessary in any such notice to name the occupier or the owner of such building or land: Provided always, that when the owner of any such building or land, and his residence, are known to the commissioners, it shall be the duty of the commissioners, if such owner be residing within the limits of the special act, to cause every notice required to be given to the owner to be served on such owner, or left with some inmate of his abode; and if such owner be not resident within the limits of the special act, they shall send every such notice by the post, addressed to the residence of such owner.

147. Commissioners, in default of owner or occupier, may execute works and recover expenses.

148. Occupier, in default of owner, may execute works and deduct expenses from his rent.

149. If the owner of any buildings or lands made liable by this or the special act for the repayment to the commissioners of any expenses incurred by them do not, as soon as the same become due and payable from him, repay all such expenses to the commissioners, the commissioners may recover the same from such owner in the same manner as damages, or in an action of debt in any of the superior courts, or in any other court having jurisdiction.

150. Power to levy charges on occupier, who may deduct the same from his rent.

151. Occupier not to be liable for more than the amount of rent due.

152. Commissioners may allow time for repayment by owners of improvement expenses.

153. If the occupier of any buildings or lands within the limits of the special act prevent the owner thereof from carrying into

effect in respect of such buildings or lands any of the provisions of this or the special act, or of any act incorporated therewith, after notice of his intention so to do has been given by the owner to such occupier, any justice, upon proof thereof, may make an order in writing requiring such occupier to permit the owner to execute all such works with respect to such buildings or lands as may be necessary for carrying into effect the provisions of this and the special act, or of any act incorporated therewith; and if after the expiration of ten days from the date of such order such occupier continue to refuse to permit such owner to execute such works, such occupier shall for every day during which he so continues to refuse be liable to a penalty not exceeding 5*l.*; and every such owner during the continuance of such refusal shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

154. Nothing herein or in the special act contained shall extend to avoid any agreement in writing entered into before the passing of the special act for erecting or altering any building, but the same shall be performed with such alterations as may be rendered necessary by this or the special act, and as if such alterations had been stipulated for in such agreement; and the difference between the cost of the work according to the agreement and the cost of such work as executed according to the provisions of this and the special act shall be ascertained by the parties to the respective agreements, and paid for or deducted as the case may require; and if the said parties do not agree upon the amount of such difference, the same shall, on the request of either party, (notice being given to the other,) be decided by the surveyor to the commissioners, and for his trouble in making such decisions each of the said parties shall pay to the said surveyor such sum not exceeding 1*l.*, and to be disposed of for such purposes of the special act, as the commissioners shall direct.

155. Nothing herein or in the special act contained shall affect any lease or agreement for a lease whereby any person may be bound to erect buildings upon any building ground within the limits of the special act, but the buildings mentioned in such lease or agreement shall be built according to the conditions which may be rendered necessary by this or the special act, in the same manner as if this and the special act had been passed and in operation at the time of making such lease or agreement, and the same had been made subject thereto, and that without either party being entitled to any compensation.

#### *Rates.*

156. Where by this or the special act the occupiers of any lands or buildings are made liable to the payment of any expenses which are directed to be recoverable as private improvement expenses, the commissioners may charge the occupiers of such lands and buildings respectively with special rates, over and

above any other rates to which such persons may be liable under this and the special act, after the yearly rate of 6*l.* 10*s.* in the 100*l.* on the cost of such private improvements respectively, such special rates to be made payable during 30 years next after such expenses have been incurred.

157. Where new sewers are made commissioners may make special sewer-rates.

158. Commissioners to make a general sewer-rate distinct from other rates.

159. Commissioners may borrow money by mortgage of sewer-rates.

160. Sewer-rate to be of such amount as to pay off monies borrowed thereon in 30 years.

161. Where by this or the special act the commissioners are authorized to order that any rate shall be levied by assessments to be made for separate and distinct districts, the commissioners from time to time may order assessments to be made in respect of the rates authorized to be so levied upon separate and distinct districts, and in such case the commissioners shall cause their surveyor to describe and define in the plan of the town or district within the limits of the special act every such separate and distinct district for the purposes of rating as aforesaid and so from time to time as separate occasion shall require.

162. Rates to be levied on separate and distinct districts.

163. In all cases when the commissioners have paid or become liable to the payment of any expenses in constructing or laying any drain or pipe from any house or building, or in providing any privy, ashpit, or cesspool for the use of the occupiers thereof, and when neither the owner nor occupier of such house or building is willing to defray the said expenses forthwith, the commissioners shall lay drainage-rates on the occupiers of such houses and buildings respectively, to be continued for six successive years and no longer; and the sum to be annually levied by every such drainage-rate shall be one-fifth part of the whole expenses incurred in constructing, laying, or providing such drain, privy, ashpit, or cesspool as aforesaid, and shall be applied in satisfaction thereof; and the amount of any such drainage-rate may be added to any other rate levied from the occupiers of such houses and buildings, and recovered therewith by the like ways and means.

164. Every occupier of any such house or building at a rent not less than the rack rent who has paid any such drainage-rate shall be entitled to deduct three-fourths of the rate so paid by him from the rent payable by him to his landlord: every occupier at a rent less than the rack rent who has paid any such drainage-rate shall be entitled to deduct from the rent payable by him to his landlord such proportion of three-fourths of the rate so paid by him as the rate payable by him bears to the rack rent.

165. Landlords being also tenants, may deduct proportion of drainage-rate from their rent.

166. Without the written consent of the

owner of any such house or building, the commissioners shall not be empowered to expend during the term of six successive years more in the whole than one year's rack rent thereof in constructing or laying any such pipe or drain, or in providing any such privy, cesspool or ashpit.

167. Rates to be levied on persons holding, using, or occupying houses, &c. Proportion to be paid by holders of lands, nursery grounds, &c.

168. Provided also, that no person shall be rated to any rate made in pursuance of this or the special act, in respect of tithes, or of any church, chapel, meeting-house, or other building exclusively used for public worship, or any building exclusively used for the purposes of gratuitous education of the poor or of public charity, or any building or land belonging to the commissioners.

169. Rates may be prospective or retrospective.

170. Commissioners to cause estimates to be prepared before making a rate.

171. Notice of rate to be given.

172. Form of rate.

173. Rates to be open to inspection of rate-payers, who may take copies, &c.

174. Rates may be amended.

175. Value of property to be ascertained according to poor-rate.

176. If poor-rate an unfair criterion, a valuation to be made. 6 & 7 W. 4, c. 96.

177. Person appointed a valuer to make a declaration before acting.

178. Poor-rate to be open to inspection by commissioners.

179. Owner of property unoccupied to be assessed to the sewer-rate.

180. Unoccupied premises to be included in the rates; and if the premises are afterwards occupied, a portion of rate to be paid.

181. Owners of property not exceeding 10*l.* per annum net annual value to pay rates instead of occupier.

182. Not necessary to name the owner where unknown.

183. Tenants under existing leases to repay the

184. Occupiers may be rated if they think fit.

#### *Appeal.*

185. Persons aggrieved may appeal to petty sessions on the ground of incorrectness, &c., of valuation. Their decision to be final unless appealed from to quarter sessions.

186. Parties may appeal to the quarter sessions against a rate.

187. Quarter sessions to hear appeal, whose decision shall be final.

188. No order of special sessions to be in force pending appeal.

189. On appeal, the quarter sessions and petty sessions to have same power of amending and quashing rates, and of awarding costs, as in appeal against poor-rates.

190. Order of justices not to be removed by certiorari.

#### *Recovery of Rates.*

191. Rates to be recovered by distress.

192. Form of warrant of distress. Constables to assist in making distress.

193. Rate-books to be evidence.

194. Remedy against persons quitting before payment of rates.

195. Rates to be apportioned on holder quitting.

196. Rates due from owner may be recovered from occupier.

197. Occupier not to be required to pay more than the amount of rent owing by him.

198. Occupier refusing to give name of owner liable to a penalty.

199. Surveyors of highways may proceed for the recovery of arrears of highway-rates.

#### *Bye-Laws.*

200. The commissioners may from time to time make such bye-laws as they think fit for the several purposes for which they are hereinbefore or by the special act empowered to make bye-laws, and from time to time repeal, alter, or amend any such bye-laws, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or the provisions of this or the special act, and be reduced into writing, and have affixed thereto the common seal of the commissioners if they be a body corporate, or the signatures of two of the commissioners if they be not a body corporate, and, if affecting other persons than the officers or servants of the company, be confirmed and published as herein provided.

201. Bye-laws may be enforced by imposition of penalties.

202. Bye-laws to be confirmed.

203. No such bye-laws shall be confirmed, unless notice of the intention to apply for a confirmation of the same have been given in one or more newspapers circulating within the limits of the special act one month at least before the hearing of such application; and any person desiring to object to any such bye-law, on giving to the commissioners notice of the nature of his objection ten days before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one objecting party to be heard on the same matter of objection.

204. A copy of proposed bye-laws to be open to inspection.

205. Publication of bye-laws.

206. Bye-laws to be binding on all parties.

207. Evidence of bye-laws.

208. Penalty on pulling down boards.

209. Tender of amends.

#### *Recovery of Damages and Penalties.*

210. Clauses of 8 & 9 Vict. c. 20, as to recovery of damages and penalties incorporated with this and special act, &c.

211. In Ireland part of penalties to be paid to guardians of unions.

212. All things herein or in the special act,

or any act incorporated herewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

213. Persons giving false evidence liable to penalties of perjury.

#### *Access to Special Act.*

214. Copies of special act to be kept by commissioners at their office, and deposited with the clerks of the peace, &c., and be open to inspection. 7 W. 4, & 1 Vict. c. 83.

215. Penalty on commissioners failing to keep or deposit such copies.

### COSTS OF ACTIONS FOR SMALL DEBTS.

#### PROPOSED IMPROVEMENTS OF SUPERIOR AND INFERIOR COURTS.

##### *To the Editor of the Legal Observer.*

SIR,—I take leave to trouble you with the following suggestions, as to improving and placing the law relative to the recovery of small debts, upon a much more convenient and satisfactory footing than it is at present.

I have always cordially coincided with your opinion, that no inferior courts ought to have been created until the remedies afforded by the superior tribunals were exhausted; and that the best plan of improvement is that which does the least violence to the established order of things. Had this principle been adhered to, the enormous expense caused to the country by the new courts, would have been saved. However, as they have now so thickly sprung up, I seek not to destroy them—my plan will tend rather to establish them.

One of the several objections to the county courts is want of an easy and ready mode of appeal; another, the trouble and loss of time they occasion to the suitors themselves.

Now, my proposition is simply this:—

1st, Reduce the costs of small actions in the superior courts to the lowest possible penny; (as I have already several times suggested, *vide* L. O. vol. 23, No. 711, and vol. 31, No. 914, Sept. 1845), and

2ndly, Restore the general jurisdiction of the superior courts down to their late limit, so that persons who wish to resort to a superior court, (wherein nearly 90 per cent. of such actions are usually settled, without a trial or trouble to the parties), may have the option of doing so, which would be far more agreeable to the habits and feelings, and create more respect for the new courts in the minds of the people of this free country, than any compulsory act of parliament can ever command.

Enclose copies of two bills of costs, marked respectively Nos. 1 and 2, which I have drawn out as evidence or examples, of the great reduction that may still be made in the costs of small actions in the superior courts, without at all disturbing the machinery thereof, (except

the rule to plead, which, doubtless, may be dispensed with in all cases,) by merely reducing the office fees on issuing the writ and the several other items, to 1s. each, besides the attorney's charges for the proceedings, (which, being now all printed, are filled up in a few minutes,) to about one-half; and although small as some of such charges would then be individually, it is, I believe, the only way in which the costs can be sufficiently reduced to be now tolerated without making serious organic alterations, which, under all circumstances, are not in any view desirable.

No. 1 shows that the costs of a judgment by default in debt, in a common case for goods sold and delivered, where all the parties live near each other, may be lowered to the small sum of 2l. 10s. No. 2 shows that by the like reductions, and under similar circumstances, the costs of a trial would be only about 4l. 10s., and other matters in proportion. The costs of a writ (upon which a large number of such actions are usually settled) would be about one guinea.

The deficiency, if any should be thus caused to the County Courts, might be supplied by directing the writs of trial, and possibly of inquiry also, to the judges thereof, and tried with or without a jury, and perhaps writs of trial in actions for larger sums in simple cases might be safely disposed of by the same persons.

Although cheap law is probably, like other cheap articles, a commodity of questionable value, still I fear it is now one of the chief conditions upon which the legislative sanction can be obtained to the judges making such modifications, which are much less alterative than those proposed by the two acts introduced by the present Attorney-General and Mr. Watson, for a similar purpose, in May, 1843, (*vide* L. O. vol. 24, No. 782,) one of which acts contained, in my humble opinion, many excellent improvements.

In conclusion, I submit that uniformity in the administration of the law is of paramount importance, and this can only be properly preserved in the inferior courts, by the restoration of the concurrent jurisdiction of the superior tribunals, and which therefore ought to be purchased on almost any reasonable terms, even at the price of fixing a graduated scale of costs, if that be practicable. VINDEX.

#### BILL OF COSTS, No. 1.

|  | £ | s. | d. |
|--|---|----|----|
| Instructions to proceed - - -                    | 0 | 3  | 4  |
| Writ of summons - - -                            | 0 | 7  | 6  |
| Copy and service - - -                           | 0 | 3  | 0  |
| Searching for appearance - - -                   | 0 | 3  | 4  |
| Affidavit of service of the writ and costs - - - | 0 | 4  | 0  |
| Appearance, and paid entering 1s. -              | 0 | 4  | 0  |
| Instructions for declaration - - -               | 0 | 3  | 4  |
| Drawing same, fo. 4, at 6d. - - -                | 0 | 2  | 0  |
| Ingrossing - - -                                 | 0 | 0  | 8  |
| Notice copy and service - - -                    | 0 | 3  | 0  |
| Particulars - - -                                | 0 | 1  | 0  |

(\*



|                                      |    |    |    |
|--------------------------------------|----|----|----|
| Brought forward - -                  | £. | s. | d. |
| Drawing judgment - -                 | 1  | 15 | 2  |
| Ingrossing fo. 8 - -                 | 0  | 1  | 8  |
| * { Entering on the roll - -         | 0  | 1  | 4  |
| { Paid for roll - -                  | 0  | 0  | 10 |
| Paid signing judgment - -            | 0  | 1  | 0  |
| Attending to sign same and tax costs | 0  | 3  | 4  |
| Bill and copy - -                    | 0  | 1  | 6  |
| Paid the Master - -                  | 0  | 1  | 0  |
| Term fee, &c. - -                    | 0  | 2  | 10 |
|                                      | 2  | 10 |    |

Thus leaving at least two guineas profit.

#### BILL OF COSTS, No. 2.

|  |   |    |    |
|--|---|----|----|
| The same as No. 1, down to the asterisk (*) in Bill No. 1, but which will be at least 11s. less if the defendant appears to the writ - | £ | s. | d. |
| Similiter - -  | 1 | 15 | 2  |
| Summons to try before local judge -  | 0 | 2  | 0  |
| Copy and service - -   | 0 | 1  | 0  |
| Attending (consent or order obtained) -  | 0 | 2  | 0  |
| Paid for order - -   | 0 | 3  | 4  |
| Copy and service - -   | 0 | 1  | 0  |
| Drawing issue - -  | 0 | 2  | 0  |
| Ingrossing fo. 8 - -   | 0 | 1  | 8  |
| Notice of trial, copy, and service -   | 0 | 1  | 4  |
| * { Entering on the roll - -   | 0 | 1  | 4  |
| { Paid for roll - -  | 0 | 0  | 10 |
| Ingrossing writ of trial, fo. 10 -   | 0 | 1  | 8  |
| Paid for parchment - -   | 0 | 1  | 0  |
| Paid issuing - -   | 0 | 1  | 0  |
| Attending - -  | 0 | 3  | 4  |
| Particulars to annex - -   | 0 | 1  | 0  |
| Attending to lodge writ - -  | 0 | 1  | 0  |
| Paid thereon - -   | 0 | 3  | 4  |
| Attending court on trial - -   | 0 | 6  | 8  |
| Paid fees, say - -   | 0 | 10 | 0  |
| Bill of costs and two copies - -   | 0 | 3  | 0  |
| Notice of taxing costs - -   | 0 | 2  | 0  |
| Drawing judgment - -   | 0 | 1  | 8  |
| Paid signing - -   | 0 | 1  | 0  |
| Attending to sign same and tax costs   | 0 | 3  | 4  |
| Paid taxing - -  | 0 | 1  | 0  |
| Term fees, &c. - -   | 0 | 3  | 4  |
|  | 4 | 18 | 0  |
| Deduct disbursements - -   | 1 | 1  | 0  |
|  | 3 | 17 | 0  |

Say 3l. 15s. profit.

#### AMERICAN LAW REFORM.

THE following is an abstract of the Report of the Commissioners on Practice and Pleading, made to the Legislature of the State of New York, and dated 25th Sept. 1847.

"The result of our progress thus far, is a determination as soon as practicable, to recom-

\* These two items may be dispensed with, unless where really necessary for some ulterior purpose.

mend to the legislature the following particulars:—  
 "1. The establishment of a new system of practice and pleading, instead of a plan of amendment, (of the old system), merely.  
 "2. The abandonment of the distinction between the modes of proceeding and pleading in cases of legal and equitable cognizance, and the adoption of an uniform system, as applicable to all cases.  
 "3. That the distinctions of forms of actions at law be no longer retained, and that every action rest upon its own facts, and the law of the case as applicable to the rights which it involves; and,  
 "4. The establishment of a new system of pleading."

The "new system of pleading," proposed by the commissioners, is stated by them to be "substantially this: that the pleadings shall consist of a declaration and an answer, which shall set forth the facts constituting the cause of action or defence, truly, in plain and concise language, and in such a manner as to enable a person of common understanding to know what is intended. In proper cases an affidavit to be made at least of the belief that the facts alleged are true. All matters alleged on either side are not deemed on the other to be taken as true. No other pleading than the declaration and answer to be permitted, excepting where new matter is set up in the answer, in which case it may be denied by replication." From the "*Herald for Europe*," (New York Paper,) Sept. 30, 1847.

#### LAW OF LANDLORD AND TENANT.

##### LANDLORD'S POWER TO RE-ENTER WITHOUT BRINGING AN EJECTMENT.

A RECENT case at the Middlesex Sessions, in which a house agent was indicted for assaulting and forcibly ejecting the wife and family of a tenant of his employer, and acquitted on the grounds that the tenant's agreement gave the landlord or his agents power to enter and take possession, and, in the event of any proceedings being taken against him in consequence, to plead "leave and license," having drawn attention to the power of landlords to re-enter without bringing an action of ejectment, a short statement of the law on the subject seems desirable.

\* At common law, if a man had a right of entry, he was permitted to enter with force and arms, and to detain his possession by force, when his entry was lawful. Bac. Abr. Tit. Forcible Entry. The disorders to which the exercise of this right gave rise soon rendered the interference of the legislature necessary; and accordingly several statutes were passed prohibiting entries by the "strong hand." Subject to this limitation the right continued to exist as before, and the principle that one who has a right of entry may exercise it, provided he do so peaceably, has been recognized in several modern cases.

In *Taylor v. Cole*, 3 T. R. 292, the plaintiff



brought an action of trespass. The first count in the declaration was for breaking and entering the plaintiff's house and expelling him; and the second, for expelling the plaintiff from the occupation of his house. The defendant pleaded:—1st, the general issue to the whole declaration; 2ndly, as to the breaking and entering in the first count, a justification as sheriff of Middlesex under a *fi. fa.*, at the suit of J. H.; and 3rdly, as to the expulsion in the second count, a justification under a *fi. fa.* at the suit of R. B. Sheridan. The 3rd plea stated that the plaintiff was possessed of an interest in a term of years then unexpired in the King's Theatre, and that by virtue of a writ he seized the plaintiff's interest in the term and duly assigned the same to T. Harris, "who afterwards entered into the said house, &c., the door of the same house then being open, and peaceably and quietly expelled the plaintiff," &c. Lord Kenyon, C. J., said, "In this case I may even admit that the sheriff had no right to deliver possession to the assignee under the *fi. fa.*;"—"but this plea does not state that the sheriff put the assignee into possession, but only that he assigned to Harris, who afterwards entered and peaceably and quietly expelled the plaintiff." It is true that persons having only a right are not to assert that right by force; if any violence be used it becomes the subject of a criminal prosecution, and that is the amount of the case cited from Shower,<sup>b</sup> which was a proceeding under a statute for a forcible entry. But this is not a criminal prosecution, and the question is whether a person having a right of possession may not peaceably assert it, if he do not transgress the laws of his country. I think he may: for a person who has a right of entry may enter peaceably, and being in possession may retain it and plead that it is his soil and freehold." In *Taunton v. Costar*, 7 T. R. 431, a tenant held over after his tenancy was determined, and his landlord by way of taking possession, put his cattle on the premises, which the tenant distrained *damage feasant*, whereupon the landlord replevied. It was attempted to distinguish this case from *Taylor v. Cole*, on the ground that in that case the plaintiff was *peaceably and quietly expelled*, whereas here the plaintiff entered upon the defendant's possession; and that the latter retained the possession still: but Lord Kenyon, C. J., said the case was too plain for argument; that if an action of trespass had been brought, it was clear the landlord could have justified under a plea of *liberum tenementum*. If indeed the landlord had entered with a strong hand to dispossess the tenant by force, he might have been indicted for a forcible entry; but there could be no doubt of his right to enter upon the land at the expiration of the term. And see *Rogers v. Pitcher*, 6 Taunt. 207, and *Butcher v. Butcher*, 7 B. & C. 399.

Whether an entry was peaceable or not is a question for the jury. *Newton and wife v.*

<sup>b</sup> *Rea v. Dean* 2 Show. 87.

*Harland and another*, Scot's N. R., 174. What degree of violence is necessary to support trespass must depend upon circumstances, and cannot therefore be exactly determined; but it has been decided that breaking open a door, the tenant having gone away leaving some trifling articles of furniture on the premises, is not sufficient. *Turner v. Meymott*, gent., one, &c., 7 Moore, 754. The plaintiff had been tenant to the defendant, and the latter had given a regular notice to quit by which the tenancy was determined. On the expiration of the notice the plaintiff locked the outer door and left the premises, but omitted to deliver up possession to the defendant, and the latter a few days afterwards and during the plaintiff's absence, and when no person was in the house, broke open the door with a crowbar, and resumed possession, and shortly afterwards let it to another tenant; but some trifling articles of the plaintiff's furniture of the value of about thirty shillings still remained in the house. The plaintiff brought an action of trespass. At the trial Lord Chief Baron Richards was of opinion, that as the defendant had used force in entering the house, he had acted contrary to law, and was liable to the plaintiff, although he had received a regular notice to quit; and he observed that if a landlord might act in this manner, murder might be the result. The jury accordingly found for the plaintiff, damages 25*l.* On cause being shown against a rule *nisi* for a new trial, which had been obtained on the ground of misdirection, Lord Ch. J. Dallas said, "I take it to be clear that, on the determination of a tenancy, a landlord is entitled to take possession peaceably. The only question then is, as to the distinction between a peaceable and forcible entry. The latter is an act against the public, which subjects the party to an indictment; but surely it is a different case when a tenant holds over against law and justice. Here the plaintiff had ceased to be tenant to the defendant, and it would be going a great length to say that he could bring an action of trespass against him for entering his own house. If the plaintiff has any remedy, he may try it by an indictment for a forcible entry." Mr. J. Park said, "I am of the same opinion. It is stated in the declaration that the defendant broke and entered the plaintiff's house; but the fact was not so, for it ceased to be his the moment he quit it. The defendant had clearly a right of entry on the expiration of the notice to quit. The house might then be considered as his, and he therefore had a right to enter his own house by breaking open the door. It has been said that if the plaintiff had been within, murder might have ensued; but here there was no such danger to be apprehended, for he had quit possession, and the furniture left were articles of a trifling description, which were found to be worth not more than one pound ten." The rule was accordingly made absolute. But when a landlord gave a notice to quit, and the tenant holding over, the landlord procured a number of Irishmen to go to the house, and

after inducing the plaintiff to go away, by telling him his master wanted him, the Irishmen entered the plaintiff's room and turned his wife out into the street, and put the plaintiff's furniture out of the window; it was held that the landlord was a trespasser. *Hilary v. Gay*, 6 C. & P. 284. On *Turner v. Meymott* being cited for the defendant, Lord Lyndhurst, C. B., said, "There the tenant had gone away, and had not left his family in possession. The tenant was in that case out of possession, and no one was in possession. Where that is so, the landlord may enter if the term is at an end."

If the entry be peaceable, the subsequent possession may be defended by force: *Bac. Abr.*, Forcible Entry (B).

But, although the right of a landlord to re-enter on the determination of his tenant's interest is clear, the difficulty of exercising it peaceably is so great, as to render it practically useless. We shall therefore proceed to state the law relating to forcible entry between landlord and tenant, and in doing so we shall consider 1st, what forcible entry is; 2ndly, what remedies are given to a tenant who is forcibly dispossessed; and 3rdly, whether a landlord can by agreement with his tenant protect himself from any or all of the legal liabilities which a forcible entry incurs.

1st. In *Comyn's Dig. Tit. Forcible Entry* (A 2), forcible entry is defined to be "where a man enters into lands or tenements *manu forti*; as if he brings unusual weapons, or threatens violence, or breaks the door of the house, being locked, or ejects the possessor with violence."

In *Bac. Abr. Tit. Forcible Entry* (B), it is said that a man may be guilty of a forcible entry though there may be nobody in the house at the time; and so he may by an entry into lands where any person's wife, children, or servants, are upon the lands to preserve the possession, because whatsoever a man does by his agents is his own act. But his cattle being upon the ground do not preserve his possession, because they are not capable of being substituted as agents, and therefore their being upon the land continues no possession.

2ndly. The tenant's remedies for a forcible entry, supposing his interest in the premises has expired or been legally determined, are by criminal prosecution only. Per *Coltman, J.*, in *Newton and wife v. Harland*, *ubi supra*—he cannot maintain an action of trespass *quare clausum fregit*,—because having no title to the possession as against his landlord, he can have no right of action against him as a trespasser for entering upon his own land even with force, for although the law may have been violated by the landlord, no right of the tenant would have been infringed, and no injury sustained by him for which he could be entitled to compensation in damages. *Newton v. Harland*. And no action will lie on the statutes where the tenant has no right to the possession. *Bac. Abr. Tit. Forcible Entry* (A).

There are several modes of proceeding criminally:—

It is an indictable offence at common law. *Woodfall's L. & T.*, p. 587 (ed. 1834).

It has also been prohibited by several statutes, 2 Ed. 3, c. 3, called the statute of Northampton; 5 Ric. 2, c. 8; 15 Ric. 2, c. 2; 8 Henry 6, c. 9; 31 Eliz. c. 11. By the 5 Ric. 2, stat. 1, c. 8, "The king defendeth that none thenceforth make any entry into any lands and tenements, but in cases where entry is given by the law, and, in such case, not with strong hand, nor with multitude of people, but only in a peaceable and easy manner; and if any man thenceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will." On these statutes an indictment will lie, and if an indictment on the statute 8 Henry 6, be brought before the justices at general sessions, and the indictment be found, the tenant may obtain a writ of restitution to the sheriff by which he may be restored to his possession. *Chitty's Burn's Justice, Forcible Entry and Detainer*.

But the tenant has a more speedy remedy by applying to the justices to restore possession to him, under 8 Henry 6, c. 9. By the 3rd section of which it is enacted, "that though such persons making such entries be present, or else departed before the coming of the said justices or justice, nevertheless the same justices or justice, in some good town next to the tenements so entered, or in some convenient place, according to their discretion, shall have and each of them shall have authority and power to inquire by the people of the same county, as well as those that make such forcible entries into lands and tenements, as of them who hold the same with force; and if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall cause to re-seize the lands and tenements so entered or holden as aforesaid, and shall put the party so put out in full possession of the same lands and tenements so entered or holden as before." But by 31 Eliz. c. 11, no restitution is to be made after the party has been in possession three years.

It should be observed that the 5 Ric. 2, c. 8, and the 8 Henry 6, c. 9, extend to freehold estates only: but by the 21 James 1, c. 15, the remedies given by them were extended to tenants for years, tenants by copy of court roll, and tenants by elegit, statute merchant and statute staple. *Bac. Abr. Forcible Entry* (E).

But although where the landlord has a right to enter, no action can be maintained even where the entry be forcible, yet if, as is usually the case, personal violence be done to the tenant or those in possession for him, or his goods be removed or destroyed, trespass may be maintained for the assault or damage.

The leading case on the subject is *Newton v. Harland, Scott*, 174, in which the general principle was fully discussed. The circumstances so far as they are material were these:—the

plaintiff hired of the defendant H, for six months certain, rooms in a house occupied by H. The six months having expired on 1st March, 1837, and the rent not having been paid, H, on the 2nd March, assisted by the other defendant *Bailey*, distrained on plaintiff's goods, employing a locksmith to open the doors of the rooms in his occupation; and the plaintiff's wife refusing, on request, to quit the premises, H, at a subsequent part of the same day, accompanied by four or five other persons again entered the apartments, and forcibly expelled plaintiff's wife and children. The plaintiff thereupon brought an action of trespass for the assault, &c. The defendants pleaded, that the defendant *Harland* was lawfully possessed of a certain dwelling-house, and that the said *Frances* was unlawfully in the said dwelling-house, and that he was therefore justified in removing her.

It was contended on behalf of the defendants that H., being lawfully entitled to the possession, was justified in asserting his right in the manner he did, using no unnecessary violence, and that though, if extreme violence were used, he might be liable to a criminal prosecution, he was not civilly responsible, and *Taunton v. Costar*, *Turner v. Meymott*, *Butcher v. Butcher*, *Taylor v. Cole*, and *Rogers v. Pitcher*, were cited. For the plaintiffs *Hillary v. Gay* was relied upon. The verdict was for the plaintiffs. A rule nisi for a new trial was then obtained, and on the argument *Tindal*, C. J., said, "If the landlord, in making his entry upon the tenant, has been guilty, either of a breach of a positive statute, or of an offence against the common law, it appears to me that such violation of the law in making the entry, causes the possession thereby obtained to be illegal, and that the allegation in the plea that one of the defendants 'was lawfully in possession at the time the assault was committed,' is negatived. *Bosanquet* and *Erskine*, J's, concurred, *Coltman* dissenting. The rule was made absolute in order that the jury might find whether the entry was forcible or not. The case was tried three times, but the question was not decided.

3rdly. This being the landlord's position: having an indubitable right to re-enter on the determination of his tenant's interest, but that right being practically useless from the impossibility in the great majority of cases of exercising it peaceably, and his only means of obtaining the aid of the law being by an action of ejectment, always a very unsatisfactory remedy, since, if judgment be obtained by default, the landlord recovers no costs, and if by verdict, although he recovers possession and costs, he is obliged to resort to another action to recover the mesne profits; in such a position it was to be expected that landlords would endeavour to devise some means by which they could gain the advantages of a forcible entry without subjecting themselves to the liabilities attached to it by the law. Accordingly we find that this was attempted in *Kavenagh v. Gudge*, 7 Scott's N. R. 1025, by adding a clause in the agreement with the

tenant, that if an action should be brought by him for the entry of the landlord on the determination of the tenancy, he might plead leave and license in bar.

The plaintiff held premises, by an agreement as tenant, from year to year, under *Temperance Arden*, at 30*l.*, rent, payable half quarterly, and 3 quarters rent being in arrear, defendants entered under an authority in writing from *T. A.*, and distrained, and put out plaintiff and her lodgers and kept possession.

The agreement, in addition to the usual clauses for payment of rent and for repairing, contained a proviso, that if the rent should be unpaid on any day when the same should become due, or within 10 days afterwards, or if plaintiff should not quit and deliver up possession of the house according to notice, and in certain other events, then, without any demand whatsoever, it should be lawful for *T. A.* and her agents immediately to enter upon and take possession of the house and premises, and the plaintiff and all persons claiming under her to expel without any legal process whatsoever, and as effectually as the sheriff might do in case *T. A.* had obtained judgment in ejectment, and a writ of *Hab. fac. poss.* had been issued thereon, directed to such sheriff in due form of law, and, in case any action should be brought for such entry, defendants might plead leave and license in bar, and the agreement might be used as conclusive evidence of the leave and license. The plaintiff brought an action of trespass for entering the house and forcibly expelling her and seizing her goods. The defendants pleaded, first, not guilty; secondly, leave and license; and thirdly, as to seizing the goods, a justification under a distress for rent. The jury found a verdict for the plaintiff on the first issue, and for the defendants on the two other issues, and assessed the plaintiff's damages at 50*s.* for the trespass, not covered by the third plea; leave being reserved to the plaintiff to move to have the verdict on the second issue entered for her with 50*s.* damages. The motion was accordingly made. The general question as to a landlord's right to re-enter was not discussed, the whole argument turning upon, whether the agreement sustained the plea of leave and license, it being contended for the plaintiff that the agreement amounted to a lease, and ought to have been so pleaded.

The court assented to the two general propositions: that the defendants were bound to plead the agreement according to its legal effect, and that if the clause relied on was not in its effect a license to enter, &c., the agreement by the parties that it might be pleaded and given in evidence as such, would not entitle the defendants to retain the verdict entered for them on that issue.

*Tindal*, J., (after calling attention to the fact that there was no provision that, upon non-payment of the rent, the lease should be void so as to strip the tenant of her right to possession before the entry of the lessor, and observing that the lessor therefore had no right to the possession except under the

license thus expressly given, and it would only be upon her entry that any such right would revert in her, and after reviewing the cases) said, "In the present case the plaintiff's right to the possession as tenant continued until the lessor had availed herself of the license given by the agreement to enter and take possession. We therefore think that, under the peculiar wording of this agreement, the entry of the defendant and the expulsion of the plaintiff, may well be justified under this form of plea."

This case, therefore, decides that a landlord may so frame the agreement with his tenant as to be able to resume possession by force, and plead the agreement in bar to an action.

It was on the authority of *Kavanagh v. Gudge*, that the case alluded to at the commencement of these observations was decided. The agreement was similar in form, stipulating that if the rent should be in arrear, and in certain other cases, "the landlord and his agents may immediately enter upon and take possession of the premises, and for ever expel and remove therefrom the servants of all persons claiming under him without any legal process whatsoever. And in case of such entry, and of any action or other proceedings taken for the same by any person whatsoever, the defendant or defendants may plead leave and license of the tenant or any persons claiming." It appeared that, the rent being in arrear, Pratt, a house agent, went to the premises on the 19th August last and demanded possession, which Mrs. Passmore, the tenant's wife, refused to give up. He then broke a pane of glass, unfastened the window, raised it, and put his son through, who opened the door. Pratt then entered and again demanded possession, which being again refused, he told Mrs. Passmore he would give her 3 hours to procure lodgings, and that on his return he should expect her to deliver up the key. At 7 o'clock he again called, and ultimately consented to allow her to remain in the house till the next day. The next morning he came to the house accompanied by some men, and Mrs. Passmore refusing to admit them, he broke open the door with a crow-bar. Upon this she ran up stairs and locked herself in the drawing-room. Pratt followed and broke open this second door, and desired her to give up the key and quit the house. She refused, and Pratt then directed his men to take her down stairs and put her out. They laid hold of her accordingly and took her down stairs, but upon reaching the street-door a mob of cabmen rushed in and rescued her. She instantly ran up stairs again, but the men having followed laid hold of her by the legs and shoulders, dragged her down, and threw her out upon the pavement. As she was being dragged down the stairs she laid hold of the bannisters, but Pratt hammered her fingers till she was obliged to let go, one of them being dislocated by the blows. Prior to her having been thrown on the pavement one of the men, kicked her on the side and fractured one of her ribs. Her four children were next turned out, and she was picked up and carried in a

fainting state to a neighbouring public-house. Mr. Clarkson for the defendant relied on the authority to enter given by the agreement, and there having been, as he alleged, no more force used than was necessary, and cited *Kavanagh v. Gudge*. Mr. Serjeant Adams said that it appeared to him that this agreement was a justification for the expulsion of the party, unless it could be proved that in the accomplishment of that object unnecessary violence had been used. The only question which he should eventually leave to the jury would be, whether or no, in effecting that removal, there had been greater violence used than was absolutely necessary. Under this direction the jury, after an hour's deliberation, acquitted the prisoner.

No one can be surprised at the evident reluctance of the jury to find a verdict of acquittal, and it could only have been the deference always very properly paid to the opinion of the judge which could have induced them to do so. If Mr. Serjeant Adams' view be right, that the agreement warranted the landlord in using whatever force was necessary to expel his tenant, it would justify death itself, for it is easy to imagine circumstances in which death would be caused before the expulsion could be effected; and as there is nothing in the relation of landlord and tenant which gives any peculiar force to agreements between them, similar agreements might be made with respect to all other contracts. Therefore, if a landlord may forcibly seize a house he has let to a tenant because the rent is not paid, a tradesman may forcibly seize goods he has sold because the price is not paid. In short, the principle would be established that individuals may, by agreement between themselves, obtain the power to redress their own wrongs without the intervention of the law; a principle which it is obvious would not only cause the most frightful disorders, but would break the bond on which the very existence of society depends. In a state of nature every one is at liberty to enforce his own rights, but on the establishment of a society this power is necessarily taken away from individuals and vested in the whole body collectively, the liberty of each being abridged for the good of all. Thenceforth each member of the community must depend on the law for the protection and enforcement of his rights, and if, instead of this, he assert his own rights, or, in other words, take the law into his own hands, he commits an offence against the public. And this it is which distinguishes Pratt's case from *Kavanagh v. Gudge*. The latter was an action of trespass brought by the plaintiff for the purpose of obtaining from the defendant compensation in damages for the injury he had committed. It was a private claim between two individuals with which the public had nothing to do, and all that that case decided was, that a man has as much power to give up his right to compensation in damages as any other right which belongs to him alone. But the foundation of a criminal proceeding is an offence against the public, and it would be

contrary to all principle to hold that private individuals can, by agreement between themselves, deprive the public, forming, as it were, a third party, of a right to punish offences committed against it. Notwithstanding Pratt's case, therefore, we apprehend the result of the decided cases to be, that a landlord may make such an agreement with his tenant as will prevent the latter maintaining a civil action for a forcible entry, but that if a breach of the peace be committed the offenders are still liable to be punished criminally.

## ATTORNEYS TO BE ADMITTED.

*Hilary Term, 1848.*

[Concluded from page 62, *ante*.<sup>2</sup>]

### *Queen's Bench.*

#### *Clerks' Names and Residences.*

#### *To whom Articled, Assigned, &c.*

|  |  |
|--|--|
| De Mole, John Stephen, Kennington-green; and Courland, Wandsworth-road                           | J. B. De Mole, Merchant Taylors'-hall            |
| Duncalf, John Thomas, 20, New-Ormond-street; Walsall; and Sloane-street                          | Thomas Browning, Hatton-court                    |
| Ellis, Richard, 10, Rodney-terrace-west, Mile-end-road   | William Thomas, jun., Walsall                    |
| Easton, Charles, 6, Symond's-inn   | G. Marten, Commercial Sale Rooms, Mincing-lane   |
| Eaton, Thomas, 4, Lyon's-inn   | H. Denton, Lincoln's-inn                         |
|  | E. Smith, King's-arms-yard, and Chancery-lane    |
|  | B. Field, Lincoln's-inn-fields, & Clapham-common |
|  | C. R. Randall, Tokenhouse-yard                   |
| Eastley, Yard, 9, Artillery-place, Finsbury; and Newton Abbott                                   | P. Pearce, Newton Abbott                         |
| Faithfull, Frederick Dundas, 60, Lincoln's-inn-fields; and Wath-upon-Deerne                      | George Pearson Nicholson, Wath-upon-Deerne       |
| Frost, Horace, 66, Judd-street, New-road; Kingston-upon-Hull; Warwick-court; and Tavistock-place | D. S. Bockett, Lincoln's-inn-fields              |
| Fuller, Henry, 10, Saville-row, Walworth; and Hatton-garden                                      | Charles Frost, Kingston-upon-Hull                |
| Fuller, Frederick, 23, Southampton Row; Bath; Lloyd-square; Great Ormond-street                  | Thomas Richardson, Uttoxeter                     |
| Fearnhead, Charles Peter, 8, Clifford's-inn  | John Physick, Bath                               |
| Ford, Brutton John, 52, Great Marlborough-street; Exeter; and South-street, Berkeley-square      | P. Fearnhead, Clifford's-inn                     |
| Falconer, J. Brunton, jun., 7, Colebrook-row, Islington; and Newcastle-upon-Tyne                 | H. M. Ford, Exeter                               |
| Gross, Woolnough, 36, Sidmouth-street, Regent-square; and Eye                                    | John Mitchell, Wymondham                         |
| Goldshede, Theodore, 1, Kensington-gore; and Hammersmith   | John Fenwick, Newcastle-upon-Tyne                |
| Guy, John Pattinson, articled by the name of John Guy, York                                      | Thomas French, Eye                               |
| Gale, Frederick, 27, Upper Eaton-street, Grosvenor-place   | E. J. Sydney, Finsbury-circus                    |
| Guppy, Alfred, Honiton   | H. Richards, Chandos-street                      |
|  | George Leeman, York                              |
|  | William Ford, South-square                       |
|  | Samuel Currey, Parliament-street                 |
|  | H. C. Mules, Honiton                             |
|  | P. Mules, Honiton                                |
| Goodman, John Festing, 28, Devonshire-street, Queen-square; Marlborough; and Warnford-court      | W. C. Merriman, Marlborough                      |
| Gard, Edward Oram, 16, Milton-street, Dorset-square; and Stoke                                   | Henry Smith, Warnford-court                      |
| Gribble, John Charles, 3, Raymond-buildings; and Barnstaple                                      | Samuel Rowse, Plymouth                           |
| Gramshaw, Robert, 8, Northampton-place, Canonbury; and Leicester                                 | Stephen Walters, Basinghall-street               |
| Greaves, Thomas, 13, Regent-street, Kingston-upon-Hull   | William Gribble, Barnstaple                      |
| Greville, Giles, Bristol   | William Freer, Leicester                         |
| Harris, James Charles, Warwick   | J. A. Jackson, Parliament-street                 |
| Homfray, David, Portmadoc; Gower-place; Soleyp-place; and Frederick-street                       | C. Greville, Bristol                             |
| Haines, Frederick, Cole-harbour-lane, East Brixton   | Thomas Heath, Warwick                            |
| Hocman, Henry, 1, Arthur-street, Gray's-inn-lane; and Bewdley                                    | D. Breese, 45, Lincoln's-inn-fields              |
| Hooper, Samuel, 7, Spencer-street, Northampton-square; and Richmond                              | Messrs. Pain and Hatherly, Great Marlborough-st. |
|  | John Bury, Bewdley                               |
|  | N. Hooper, Pump-court, Temple                    |

\* The former part of this List, at p. 61, *ante*, was headed *Michaelmas* instead of *Hilary Term*.

- Harrison, Francis John, 5, Southampton-street, Bloomsbury
- Hawkins, John William, Clapham; and 2, New Boswell-court
- Hall, Thomas, jun., Wootton
- Hampson, Samuel, 21, Cold-bath-square
- Hodgson, R. Huddlestons, Bingley; and Selby
- Hare, Richard, 41, Manchester-street, Gray's-inn-road; Trelick-terrace, Pimlico
- Hoskins, Edward, Gosport
- Hollinshead, Henry Brock, Billinge Scarr, near Blackburn
- Holford, George, 21, Cloudesley-terrace, Islington; and Rusholme
- Henderson, James, De Beauvoir-town; Black-bourne; Enfield; Queen's-row, Pentonville
- Hoskins, Thomas, Gosport
- Johnson, Richard, Southport
- James, Henry Mountrick, Heavitree, Devon; Featherstone-buildings; and Chester-terrace
- Johnson, Edward Davey, 12, Clifford's-inn; and Pakenham-street
- Justice, Walter, 2, Brecknock-street, Camden-town; and Park-village-east, Regent's Park
- Jubb, Henry, 2, New Millman-street; and Wath-upon-Dearne
- Jones, John Parry, formerly called John Jones, Ruthin; Denbigh; and Alfred-street, Bedford-square
- Jones, John Humphrey, 23, River-street, Myddel-ton-square; Pwllheli; Red-lion-court; and Surrey-terrace
- Johnson, James Henry, 9, Ampton-street, Gray's-inn-road
- Keeling, Frederick John, 14, Calthorpe-street, Gray's-inn-road; Colchester; and New Ormond-street
- King, Samuel L. Wickens, 22, Wilmington-square
- Knapp, Richard, 4, Mortimer-terrace, Kentish-town; Southampton-buildings; Lower Charles-street; Devonshire-street; and Old-square, Lincoln's-inn
- Leigh, Frederick, jun., Collumpton
- Latham, William Frederick, 9, Doughty-street
- Langear, William Burbridge, 3, Lamb's-conduit-street
- Lawrence, Nathaniel Tertius, 15, Gray's-inn-square
- Lyne, Thomas, Woodhouse, near Whitehaven; Spring-place, Bagnigge-wells-road
- Lewis, L. Winterbotham, Cheltenham
- Lawrence, Charles William, 8, Bolton-street, Piccadilly; and Half-moon-street
- Leith, Frederick, 37, King's-square, Goswell-street-road; and Jewin-street
- Martineau, John Philip, 29, Montagu-place, Bedford-square
- Molineux, Joseph, Cordwainers'-hall
- Milne, William Henry, Prestwick-wood, near Manchester
- Mears, St. John John, Bagshot
- Maxwell, William Albert, 8, Arthur-street, Gray's-inn-road; Ramsay
- Mellor, John William, 21, Queen's-row, Pentonville-road
- Marlow, Thomas, 20, New Ormond-street; Walsall; Sloane-street, Chelsea
- Marfleet, John Isaac, 13, Brook-street, Grosvenor-square; Keppel-street, Russell-square
- Newman, Robert Rutland, 4, South-square
- Neale, William John, 24, Liverpool-street, Gray's-inn-road; East Retford; and East-street
- Noble, Thomas Shepherd, York
- Henry Walker, Southampton-street
- John Hawkins, New Boswell-court
- Francis Collins, Leominster and Lambeth
- James Chapman, Manchester
- William Wells, Bradford
- John Henning, Weymouth
- James Hoskins, Gosport
- O. Milne, jun., Manchester
- J. Ainsworth, Blackburn
- Henry Bury, Manchester
- John Wilkinson, Clitheroe
- James Baldwin, Colne
- Dixon Robinson, Blackburn
- Daniel Howard, Portsea
- Already admitted in C. P. at Lancaster
- H. James, Exeter
- E. W. Paul, Exeter
- Henry Smith, Bedford-row
- J. F. Justice, Berners-street
- G. P. Nicholson, Wath-upon-Dearne
- J. V. Horne, Denbigh
- C. Procter, New-square
- C. Williams, Pwllheli
- William Ghrimes Kell, Bedford-row
- F. P. Keeling, Colchester
- Samuel King, Wilmington-square; Furnival's-inn
- B. Holloway, New Woodstock
- F. P. Chappell, Golden-square
- F. Leigh, Collumpton
- A. Walker, King's-road, Gray's-inn
- H. R. Hill, Throgmorton-street
- William Tulbot, Kidderminster
- W. J. Lyne, Whitehaven
- L. Winterbotham, Tewkesbury
- J. Thomas, Tewkesbury
- J. B. Winterbotham, Cheltenham
- Charles Lawrence, Cirencester
- R. R. Bayley, Basinghall-street
- John Mourilyan, Sandwich
- Joseph Raw, Furnival's-inn
- A. W. Grant, King's-road
- George Philcox Hill, Brighton
- E. C. Milne, Manchester
- John Mears, Bagshot
- John Serjeant, Ramsay, Huntingdons.
- W. G. Taylor, 14, John-street, Bedford-row
- John Forster, Walsall
- William Slater, Manchester
- W. T. Lambourne, South-square
- John Mee, East Retford
- Henry Anderson, York
- Charles Lever, 10, King's-road

- Nicholls, C. Kerry, formerly called C. K. Whitaker, 8, Bridge-row, Battersea . . . . . H. R. Wigley, Pickett-street, Strand
- Nicholson, Samuel Pearce, 9, High-street, Islington ; Lincoln's-inn-fields ; Launceston . . . Samuel Rowles Pattison, Launceston
- Owen, Owen, 5, Warwick-court, Holborn ; Pwllheli Thomas Ellis, Pwllheli
- Ottaway, Philip Watson, 35, Charter-house-square ; Staplehurst ; and Hurton-street . . . G. J. Ottaway, Staplehurst
- Oxley, John, jun., 20, Bury-street, Bloomsbury-square ; Rotherham ; Gerrard-st. ; River-st. . . John Oxley, Rotherham
- Pratt, James, jun., York . . . . . G. H. Watson, York  
W. F. Clarke, York
- Padley, Frederick John, 43, Liverpool-street ; Argyle-square ; and Lincoln . . . J. W. Danby, Lincoln
- Prescott, George William, Stourbridge . . . Rowland Price, Stourbridge
- Pretty, Henry Granger, Tettenhall, near Wolverhampton ; and Albert-street . . . A. H. Browne, Wolverhampton
- Pike, F. Christopher Vernon, 9, Canonbury-terrace, Islington . . . F. W. Pike, Bedford-row
- Paitson, William, 11, Dalby-terrace ; and Cocker-mouth . . . John Steel, Cocker-mouth  
Charles Bischoff, Coleman-street
- Parker, Richard, 12, West-street, Walworth ; and Axbridge . . . Robert Parker, Axbridge  
J. W. Bradford, Langford
- Price, Richard Hope, jun., 18, St. Thomas'-street, east ; Tettenhall . . . J. B. Deakin and W. Dent, Wolverhampton
- Pratt, John Forster, 10, Bridge-street, Westminster ; Berwick-upon-Tweed ; Arthur-street . . . Robert Weddell, Berwick-upon-Tweed
- Peachey, James Pearse, 39, Brunswick-square . . . James Peachey, Salisbury-square
- Poore, Philip Henry, 29, Alfred-street, Bedford-square ; Andover . . . William Everett, Andover
- Pickop, William, Merioneth-terrace, De Beauvoir Town ; Blackburn ; and Argyle-street, New-road . . . Henry Hargreaves, Blackburn  
C. Richard Craddock, Gray's-inn-square
- Picard, Alfred Christopher, 41, Newington-green, Middlesex . . . William Phelps, 14, Red-lion-square
- Plews, Richard, 3, Clayland's-place, Clapham-road . . . Edward Lawrance, Old Jury-chambers
- Power, Robert, 43, Southampton-buildings, East-street ; Red-lion-square . . . Henry Power, Atherstone
- Phippard, William, 4, Everett-street, Russell-square ; Wareham . . . Thomas Phippard, Wareham  
Richard Barker, Chester  
Charles Wilson, Bedford-row
- Penny, Arthur Edmund, 4, Lincoln's-inn-fields . . . Edward Norton, Dias  
John Day, Margaret-street  
F. Browne, Margaret-street  
John Hayward, Oswestry
- Rodwell, Henry Blyth, 63, St. Andrew's-road, Southwark ; Upper Norton-street ; and Grove-place . . . C. J. Palmer, Great Yarmouth
- Rogers, John, jun., Oswestry . . . John Hlderton Burn, South-square, Gray's-inn
- Reynolds, William, Collett, Great Yarmouth ; and New Millman-street . . . Richard Roy, Lothbury
- Roose, Francis, Boulogne-sur-Mer ; Upper Montague-street . . . Charles Long, Southampton
- Roy, William Gascoigne, 42, Lothbury . . . John Slater, Hawkeshead
- Rogers, Walter Goddard, 12, Bayham-street, south, Camden-town . . . Thomas Barneby, Worcester
- Raven, John, 43, Manchester-street, Gray's-inn-road ; Hawkeshead . . . John Cole, Odiham  
G. Lamb, Odiham
- Rowlands, Richard, Worcester ; Harpur-street ; New Ormond-street . . . J. H. Benbow, Stone-buildings, Lincoln's-inn
- Scott, Henry, 2, Lamb's-conduit-place ; and Odiham . . . H. H. Statham and F. Horner, Liverpool
- Saltwell, William Henry, jun., The Grove, Highgate . . . Henry M. Aldridge, Poole
- Symes, Charles Pitman, Coombe, Liverpool ; and 9, King's-bench-walk . . . John Teesdale, Fenchurch-street  
John M. Teesdale, Fenchurch-street
- Sharpe, Benjamin Thomas, Poole . . .
- Sandilands, W. S. Tollet, 31, Fenchurch-street . . .
- Scoones, Francis, 14, Featherstone-buildings ; Tonbridge . . . Messrs. Scoones and Alleyne, Tonbridge
- Syms, John Lockhart ; 20, Hermes-street, Pentonville ; Walworth . . . Charles Davison Scott, Furnival's-inn
- Seymour, Hugh Callan, 2, Leigh-street, Burton-crescent ; and Bath . . . John Physick, Bath
- Shackles, Charles Frederic, 6, Albion-street, Kingston-upon-Hull . . . G. L. Shackles, Kingston-upon-Hull
- Smith, Albert, 14, Royal-bill, Greenwich ; Upper Stamford-street ; Blackheath ; St. Thomas'-street . . . John Smith, Devonport

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| Sandys, William George, Covent-garden  | William Sandys, 5, Gray's-inn-square             |
| Smart, Collin, 9, New Ormond-street; Bishop-wearmouth  | Robert Smart, Sunderland                         |
| Shaw, Henry, Billericay; Norfolk-street; Soho-square   | George Shaw, Billericay                          |
| Smith, William Ackers, Lower-road, Deptford  | G. Hilyard, Furnival's-inn                       |
| Sladen, Douglas Brooke, Brompton; Cranbrook; and Doughty-street  | W. T. Nave, Cranbrook                            |
| Shekell, Thomas Stevens, 5, Harpur-street, Red-lion-square; Pershore; Gower-place                          | Thomas France, Bedford-row                       |
| Templeman, J. Marsh, jun., 15, Mornington-place; Crewkerne; and Calthorpe-street                           | Edwin Ball, Pershore                             |
| Tizard, John, 9, Trellick-terrace, Pimlico; and Weymouth   | John M. Templeman, sen., Crewkerne               |
| Taylor, William, 18, Featherstone-buildings, Holborn   | R. C. Phillips, Weymouth                         |
| Thornton, George, Bradford   | G. T. Taylor, Featherstone-buildings             |
| Townsend, Frederick, 14, Manchester-street, Gray's-inn-road; and Cockermouth                               | William Wells, Bradford                          |
| Underhill, Henry, 9, Montague-place, River-terrace, Islington; and Wolverhampton                           | W. P. Pinchard, Taunton                          |
| Upward, Walter, 12, Hamilton-place, New-road   | John Steel, Cockermouth                          |
| Windus, John William, 48, Judd-street  | Edward Bennett, Wolverhampton                    |
| Wadham, James Davison, 51, Hans-place, Chelsea; and Bristol  | Samuel W. Sweet, Basinghall-street               |
| Webb, Josiah Joseph, 8, Great Ormond-street; Southsea, near Portsmouth                                     | G. F. P. Sutton, Basinghall-street               |
| Whiting, Charles David, 14, Calthorpe-street; 15, New Ormond-street; and King-street                       | R. J. Butt, Great Russell-street                 |
| Williams, Richard, 61, George-street, Euston-square; and Liverpool   | W. O. Hare, Bristol                              |
| Withall, William Henry, 7, Parliament-street   | D. Howard, Portsea                               |
| Wallingford, Edward Alfred, Saint Ives   | J. E. Marshall, Cambridge                        |
| Walker, John Fraser, 12, Bayham-street, south, Camden Town   | R. Frodsham, Liverpool                           |
| Wilson, Thomas Abrahall, Worcester   | John Gregson, Bedford-row                        |
| Whiteman, Alfred, Eastbourne   | George Game Day, Saint Ives                      |
| Walton, Edward, 19, Charrington-street, Camden town  | William Bartholomew, Gray's-inn-place            |
| Ward, Robert Arthur, Upwell; Thetford; Myddleton-street; Wells-street                                      | Thomas Birch, Tavistock-street                   |
| Warner, William Harding, 7, Millman-street, Bedford-row; Clapton; Clapham                                  | William Bartholomew, Gray's-inn-place            |
| Wilson, Robert, jun., 103, Lower Thames-street; Berwick-upon-Tweed   | John Abrahall Wilson, Worcester                  |
| Whitehouse, W. M. Mills, 5, Gray's-inn-square; Studley   | R. Terrewest, Eastbourne                         |
| Winfred, William, 31, Hart-street, Bloomsbury; Elysium-row, Fulham   | D. Erskine Forbes, Warnford-court                |
| Wheeler, William, 18, Cranmer-place, Waterloo-bridge-road; Clitheroe                                       | Gregory Faux, Thetford                           |
| Worthington, Thomas, 60, Carey-street, Lincoln's-inn; Myddelton-square; East-street, Lamb's-conduit-street | James Crowdy, 25, Old Fish-street, Doctors'-com. |
| Windsor, William, Birmingham   | Hanslip Palmer, Upwell                           |
| Yates, Alfred, 46, Finsbury-circus; and 7, Liverpool-street, Broad-street                                  | Henry James Harvey, Bath                         |
|  | George Dawes, Angel-court                        |
|  | James Call Weddell, Berwick-upon-Tweed           |
|  | Thomas James Rooke, Raymond-buildings            |
|  | Charles Addis, Great Queen-street, Westminster   |
|  | Robert Trappes, Clitheroe                        |
|  | Edward Trollope, Carey-street                    |
|  | Samuel Danks, Birmingham                         |
|  | Saul Yates, Bury-street                          |
|  | E. J. Sydney, Finsbury-circus                    |

*Admissions in Hilary Term, pursuant to Judges' Orders.*

|   |   |
|---|---|
| De Boos, T. J. Redman, 6, Skinner-street, Snow-hill; Pulford-street, Pimlico            | Charles Boydell, 41, Queen's-square, Bloomsbury |
| Hayward, Charles Edward, Browfort, Devizes; Maddox-street; Kensington; and Euston-place | Messrs. Todd and Waters, Winchester             |
| Hinton, Richard Thomas, Wenlock   | Williams and M'Leod, Temple                     |
|   | H. Hinton, Wenlock                              |
|   | R. H. Baines, Verulam-buildings                 |
| Smith, William Frederick, Hemel Hempstead   | William Smith, Hemel Hempstead                  |
| Smart, William Lynn, 5, Montague-street, Russell-square                                 | John Edward Buller, 56, Lincoln's-inn-fields    |



## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Paget v. Lillington.* Nov. 11, 1847.

63RD ORDER OF MAY, 1845.

*If the bill be not revived within the time limited on an application made under this order, a fresh application should be made to the court to dismiss the bill.*

IN this case an order had been obtained in the alternative, that the administrator of the plaintiff revive within a month, or that the bill be dismissed. The month had elapsed and the bill had not been revived.

Mr. Kindersley now stated, that there was a question with the registrars, whether there should not be a new order that the bill be dismissed, or whether the bill could be dismissed under the former order. The present motion was without notice.

Lord Langdale said that he thought there should be a new order.

Ordered accordingly.

*Re Mackerill.* Nov. 18, 1847.

TAXATION.—IRREGULARITY.—WAIVER.

*An objection to an order for taxation for irregularity, cannot be considered as waived by ambiguous acts on the part of the party taking it.—The waiver must be formal.*

THIS was a motion, on the part of Mr. Mackerill, to discharge an order obtained as of course for the taxation of his bill of costs after payment, for irregularity. The irregularity complained of was that the order had been obtained without mentioning the circumstance of an agreement having been come to between Mr. Mackerill and his clients, under which the bill was to be paid on being reduced 15 per cent. The bill related to business done for a defunct railway company; and the persons with whom the agreement was made were four out of five members of the committee of management, who formed what was called "the finance committee."

The defendants attempted to sustain their order by suggesting that they had no power to enter into the agreement made, without the sanction of the other members of the managing committee; an objection, however, which Lord Langdale immediately overruled, observing that he had not to consider whether the agreement was binding, but whether the defendants had a right to treat it as a nullity.

It was then contended that the irregularity had been waived by the conduct of the solicitor for Mr. Mackerill, who, it appeared, had induced the solicitor on the other side to postpone a warrant for one hour, which he had obtained for taxing the bills, alleging that it would be more convenient to procure a warrant for a longer time, and had himself attended at the Taxing-Master's office, to arrange for the postponement. It was now

sworn that this was done not under any intention of proceeding with the taxation at all, but in order to bring up Mr. Mackerill, when the time for taxation should arrive, to produce the agreement before the master, as a preliminary objection to the whole proceeding. An allegation that there had been a distinct offer, on the part of Mr. Mackerill's London solicitor to waive the question of irregularity, was distinctly denied.

Mr. Kindersley and Mr. Glasse for the motion.

Mr. Turner contra.

Lord Langdale said he thought the conduct of the party moving did not amount to a waiver of the irregularity. He believed there had been cases, where an order to tax had been discharged for irregularity, though some progress had been made in the taxation under it, before the irregularity was discovered. He thought it would have been the better course, had a more distinct intimation as an objection to the order, been given in the first instance. But to waive the irregularity, there must have been some more formal act than appeared to have been done in this case. The order must be discharged for irregularity, with costs.

## Vice-Chancellor of England.

*The London and Provincial Law Assurance Society v. The London and Provincial Joint-Stock Life Insurance Company.* Nov. 11, 1847.

PUBLIC COMPANY.—SIMILARITY OF NAME.

*Where one public company assumed a name in some respects similar to another public company, but it appeared that the former was not likely to suffer any injury from the resemblance; an injunction to restrain the latter from continuing their name and title refused, with liberty to plaintiffs to bring an action at law.*

THIS was a motion on behalf of the London and Provincial Law Assurance Company, for an injunction to restrain the London and Provincial Joint-Stock Life Insurance Company from continuing to use the words "London and Provincial," as part of their name and style. The plaintiff's company was registered in November, 1846, and the defendant's company in June, 1847.

Mr. Bethell, Mr. Rolt, and Mr. Glasse, for the injunction, contended, that as the defendants had prefixed the words "London and Provincial" to their title, the public would be misled, and much confusion caused, the plaintiffs being in the habit of calling themselves merely "The London and Provincial Assurance Company," and that on several occasions letters addressed to the defendants had been delivered

at the offices of the plaintiffs. *Perry v. Truefitt*, 6 Beav. 66 & 418; *Millington v. Fox*, 3 Myl. & Cr. 338.

Mr. Stuart and Mr. F. J. Hall were for the defendants, but were not heard. It appeared, however, that the prospectuses of the two companies were very dissimilar, and that the offices of the plaintiffs were in Nicholas Lane, Lombard Street, and those of the defendants in Bridge Street, Blackfriars.

The Vice-Chancellor said, it appeared to him to be a very simple case; it was not an application to restrain the use of an entire name, but only the two first words of it. The principle on which the court acted was clear; it always had regard to the two questions, first, whether the plaintiff had carried on his trade for such a length of time with the exclusive usage of a certain name as to justify a summary interference with the defendant; and secondly, whether the title adopted by the defendant was likely to mislead the public, and so produce an injury to the plaintiff. Now it appeared to him that when persons intended to insure in a society they would make particular inquiries as to its merits, and the first thing that would strike them on reading the plaintiff's title would be the word "Law," and they would immediately be apprized that the society was one maintained by lawyers; the word Law was not attempted to be used by the defendants, but merely the term Joint-Stock "Life" Insurance Company. He did not think, therefore, that any mistake was likely to occur. As to any particular damage that might arise to the plaintiffs, he thought that might be a fair question to be tried at law. He should therefore refuse the injunction, but would allow the motion to stand over to direct a trial at law in the usual way.

*Roberts v. Mudocks.* Nov. 16, 1847.

BILL OF REVIVOR.—INSUFFICIENT PROBATE STAMP.—NEGATIVE PLEA.

*To a bill of revivor filed by the executrix of the original plaintiff, a plea of the statutes regulating the stamps on probates, and averring that the stamp on the probate was insufficient, overruled, the court holding that the plea should have been simply "not executrix," and that a plea in substance negative but in form affirmative is bad.*

In this case the original bill had been filed to recover a sum of 18,000*l.* and upwards, one of the plaintiff's had died, and the present plaintiff revived the suit by a bill of revivor, spring in the character of executrix of the testator, the former plaintiff in the cause.

To this bill of revivor a plea was put in, setting forth that the assets of the testator had been sworn under 5,000*l.*, and duty had been paid on that sum only by the executrix, that the original bill sought to recover a sum of 18,000*l.* and upwards, and that the probate duty was therefore insufficient, and by the statute 9 & 10 W. 3, c. 25, ss. 19 & 59, in conjunction with the statute 55 Geo. 3, c. 184, s. 8,

executors were precluded, in case an insufficient probate duty had been paid, from suing in any court of law or equity. The plea now came on for hearing.

Mr. Bethell and Mr. Renshaw objected to the form of the plea, that, being in fact a negative one, it was in form affirmative; that it should have averred that the executrix had not duly proved the will, or simply that there was no probate.

Mr. Stuart and Mr. Craig, contra, submitted that the plea was in a proper form. The defendant could not conscientiously swear that the plaintiff had not proved the will, for the fact was well known to be otherwise, neither could he swear to a matter of law; what he had done was to aver the fact and conclude with the matter of law. If the defendant had pleaded negatively, and the plea had been replied to, the probate would have been put in evidence, and the defendant would have been unable to prove that the probate did not cover so large a sum as that sought to be recovered, for the pleadings in the bill of revivor would not have raised the question as to the sufficiency of the stamp. *Christian v. Devereux*, 12 Sim. 272; *Hunt v. Stevens*, 3 Taun. 113; *Simon v. Milman*, 2 Sim. 241.

The Vice-Chancellor said, that if the defendant had pleaded, following the words in the bill, that the plaintiff was not the sole legal representative of the testator, issue would have been taken on that fact, and then the statement on the original bill might have been discussed. He could understand the plea, but the only question was as to the form of its being affirmative when it was in reality a negative plea. Take the case of a person claiming to be heir, and filing his bill, as a defence to such bill, instead of putting in a plea of not heir, would it be a good substitute to go through a long rambling, genealogical statement, which might eventually establish that some other person was heir? His opinion was, that if the plea had been negative in its form it would have been good, but that in its present shape it was bad. Plea overruled with costs.

Vice-Chancellor Knight Bruce.

*Reeve v. Richer.* Monday, November 8, 1847.

PRACTICE.—PARTIES.—HUSBAND AND WIFE.—SET-OFF.

*A legacy was bequeathed to an unmarried woman, who, after the date of the will and before the death of the testatrix, married. The legacy was given out of the produce of real estate directed to be sold. The wife possessed herself of part of the assets of the testatrix, consisting of a deposit note, and the executors brought an action against the husband for the same, and recovered a verdict with damages. A suit was instituted against the executors, and the party to whom the produce of the real estate was bequeathed (subject to payment of the legacy) for payment of the legacy. Held,*

*that the legatee of the produce subject to the legacy was not a necessary party, and also that the executors could not set-off the judgment in the action against the legacy.*

THIS was a bill filed for payment of a legacy. The facts were as follow:—Hannah Reddish, widow, by her will, dated the 4th day of May, 1842, devised to Thomas Richer and William Merrington, certain hereditaments upon trust to sell, and gave the sum of 140*l.*, part of the produce, to her niece E. R. Keeble, and the residue thereof, after payment of the expenses of sale, to John Richer, and in case he should die in her lifetime, to his children; and the testatrix appointed the said Thomas Richer and William Merrington her executors. The testatrix died on the 17th Feb. 1845. On the 7th of July, 1843, E. R. Keeble married William Reeve. Thomas Richer and William Merrington, upon receiving 140*l.* from John Richer, conveyed to him the hereditaments before-mentioned. Some time before her death, and on the 1st of August, 1839, the testatrix deposited with Messrs. Alexander & Co., bankers, a sum of 65*l.*, whereupon she received their promissory note, called a "deposit note," for that sum, with interest at 2½ per cent., payable to her or order. This note came into the possession of her niece, and, as she alleged, as a gift from the testatrix, but which was denied by the executors. An action of trover for the recovery of the note or the value thereof, was commenced by the executors in the month of April, 1846, against William Reeve, the husband, and it was tried on the 30th of July, 1846, when a verdict was found for the executors, with 42*l.* damages, the amount remaining due on the note, subject to be reduced to 40*s.* if William Reeve should deliver up the deposit note; and upon this verdict judgment was entered up against him, but he did not deliver up the note until long after the bill was filed, or pay the costs. The bill was filed by the husband and wife against the executors and John Richer for payment of the legacy. The defence made was, that the plaintiffs were not entitled to the legacy without allowing the executors to retain or set-off the amount of the costs incurred in the action, the promissory note having only been delivered up during the progress of the suit. They also insisted that the legatee of the produce of the sale, subject to the legacy, was not a necessary party.

Mr. Russell and Mr. Taylor appeared for the plaintiff, and cited *Jeffs v. Wood*, 2 P. Wms. 128; *Carr v. Taylor*, 10 Ves. 574; *Rankings v. Barnard*, 5 Madd. 32; *Ex parte O'Ferrall*, 1 Glyn. & Jam. 347; and *Wright v. Moody*, 1 Sim. & Stev. 266, and Beames' Ord. 464.

Mr. Toller, for the defendants, cited *Mac Mahon v. Burchell*, 3 Hare, 9, and 5 Hare, 322; *Jones v. Mossop*, 3 Hare, 568; *Hall v. Hill*, 2 Dr. & War. 109; and *Williams v. Davies*, 2 Sim. 461.

Sir J. L. Knight Bruce, V. C. I am of opinion that it was unnecessary to make John Richer party to the suit. The bill, as against John Richer, must be dismissed with costs. As to the other defendants, the action in ques-

tion was an action of trover brought by them expressly as executors, not in their own right, and they are not liable as executors for the sum demanded by the bill here, which was given by the testatrix out of a portion of her real estate merely. How the case would have stood if such circumstances had not existed, I need not say. In addition, there is here the circumstance that the deposit note having been given up, the damages for which the judgment is recovered, independently of the costs, are the reduced damages of 40*s.* only,—in fact, nominal damages; and the defendant, John Richer, who is beneficially entitled to the real estate charged by the will with 140*l.*, is not, as I understand, interested in the testatrix's residuary personal estate. But there is, moreover, the fact, that the gift by the will of the 140*l.* was to the wife, whose marriage took place between the will and the death, whilst the action was, and the judgment of course is, against the husband alone, and the wife is living as well as the husband. I think that in the present case the set-off or deduction upon the ground of that judgment cannot be allowed to the defendants the trustees. As against them, there must be a decree for the 140*l.*, with interest and costs, the interest at 4*l.* per cent. from the 17th of February, 1846. The payment must be either to the husband or the husband and the wife, according as the practice of the court may be ascertained to be. I do not of necessity direct it to be paid to the husband and wife. Something may turn upon the form. Let it be according to the strict rules of the court, either to the husband or to the husband and wife. I do not know how the strict rule of the court may be, and I wish the registrar to be very careful. I give the plaintiffs the costs even as against the trustees most reluctantly. I would not have done it if I could have avoided it.

#### Appeals in Bankruptcy.

(Before Vice-Chancellor Sir J. L. Knight Bruce.)

*Ex parte Bell, in re Tunstall and Cash.*

LIEN ON GOODS.—FRAUDULENT REMOVAL.

*A bankrupt who had given a lien on certain goods, by fraud obtained possession of them, and rendered them undistinguishable by mixing them with other goods of the same sort, but the court gave effect to the lien to the extent of the goods or their value.*

The petitioner in this case was the public officer of the Bristol Branch of the National Provincial Bank of England, setting forth that the bankrupts, Tunstall and Cash, oil merchants at Bristol, who kept an account at the bank, had, on the 1st of June, 1847, overdrawn their account 13,755*l.* 6*s.* 8*d.*; and on the 2nd paid, in bills and cash 593*l.*, but on the same day sent an order for payment by the bank to the bankrupts' account in London of 737*l.* 10*s.* 10*d.* In consequence of the remonstrance of Stephens, the manager of the bank, on the state of their account, the bankrupts offered to place in his hands 20 tons of oil belonging to them, in the

warehouse of the Bristol and Birmingham Railway, but which it had been arranged should be removed to the cellars of Mr. Johnson, a warehouse-keeper. Tunstall gave Stephens the following order:—"Bristol, 3, 6 Mo., 1847. R. H. Johnson, Clare Street Hall. Please transfer to H. E. Stephens the olive oil (about 20 tons) which we have this day arranged for storing in thy cellar. 'Tunstall and Cash:'" and this was accompanied by this memorandum,— "Bristol, 3, 6 Mo., 1847. To the directors of the National Commercial Bank of England. In consideration of advances made on our account, we have this day directed the transfer by R. H. Johnson, of 20 tons of olive oil or thereabouts, into the name of H. E. Stephens, your manager here, which oil we hereby authorize you to sell and dispose of where and as you shall see fit, and to place the proceeds to our credit. 'Tunstall and Cash.'" The order given to Stephens was delivered by him to Johnson. On the 4th of June, Tunstall paid in bills and cash 848*l.* 19*s.* 4*d.*, and at the same time directed the bank to pay 816*l.* 6*s.*, on account of overdue acceptances, and by letter stated, that some delay would take place in the storing of the oil on account of cooperage, which, when done, would be placed in Johnson's cellars. On the 5th of June, the drafts for the acceptances were given and an order for delivery of the oil by the railway company was given to Stephens, which was dated for July 4th, instead of June 4th, but afterwards rectified. It was presented on Monday, June 7, when it was discovered that part of the oil had been delivered to Smith, under a written order of the bankrupts, dated 5th June. Smith was superintendent of the bankrupt's manufactory, and at six o'clock on the 7th Tunstall gave him the order, dated 3rd of June, with directions to remove the oil to the manufactory, which was done on that and the following day. A fiat issued against Tunstall and Cash on the 11th of June, and they were declared bankrupts. The petition prayed that it might be declared, that under these circumstances, the bank was entitled to a lien on 20 tons of olive oil as a security for the debt due from the bankrupt: that their interest in such security might be estimated at 960*l.*, and that leave might be given to the petitioner to prove for the difference between such sum and the amount due to the bank from the bankrupts. The petition was opposed on behalf of the assignees, on the ground that the transaction was not completed by the delivery of the oil, and that the oil having subsequently passed into the hands of the bankrupt, had become in their order and disposition, and besides this, had been mixed with their other stock, and could not be distinguished. Another ground was, that no notice having been given to the company to detain the remainder of the oil not delivered on the 7th, the bank had assented to the course adopted by the bankrupts.

Mr. Bacon and Mr. J. T. Humphry for the petition.

Mr. Russell and Mr. Osborne for the assign-

The Vice-Chancellor. I decline saying whether, according to the description given by the counsel for the assignees, there was or was not a transfer of the property; but I am satisfied that there was a valid and available contract for a lien before the bankruptcy, a contract subject only to the question, whether the bankrupts at the time they became bankrupt had the consent and permission of the true owners to hold, and had the order and disposition of these goods whereof they were reputed owners. I am of opinion that upon the facts of this case, that such possession as they had at the time of the bankruptcy—which is the only period to which the 72nd section of the act refers;—that at such time such possession, order, or disposition as they had was not with the consent or permission of the bankers, who for this purpose were the true owners; and therefore that effect must be given to the limited extent to which it is asked, namely, the 20 tons, or the produce amounting to 960*l.* The costs to be paid in the usual manner where there is a written security.

Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Inhabitants of Henley.*  
Michaelmas Term, 1847.

HIGHWAY.—REPAIR.

*In an indictment for the non-repair of a road, to which the defendants pleaded not guilty, and the evidence showed that the road never was a hard road, and that it was in as good state of repair as it had usually been heretofore; the Court held that the question to be submitted to the jury was, whether the road was in a state in which the public could pass along with ordinary convenience: and the degree of repair, with reference to the original state of the road, was not a question for their consideration.*

THE defendants were indicted for the non-repair of a road. They pleaded, as to part of the road, not guilty, and as to the remainder, that a third party was liable. On the first issue a verdict was found for the Crown, and on the second issue the defendants had a verdict. It appeared the road in question connected two other roads in the same parish, and the part in question, which by the verdict the defendants were found liable to repair, had never been repaired with broken stones or hard materials, and the evidence was that it was at the time the indictment was preferred in as good a state of repair as it had usually been known to be. The case was tried before Mr. Justice Patteson at the last assizes for the county of Suffolk. The case was left to the jury on the first issue whether the defendants were liable to repair the road.

Byles, Serjeant, now moved, pursuant to leave reserved at the trial, to enter a verdict for the defendants on the first issue, on the ground of misdirection. He contended, on the authority of the cases *Rex v. Cluworth*,<sup>a</sup> and *Rex v. Landulph*,<sup>b</sup> that the parish was not

<sup>a</sup> 1 Salk. 359.

<sup>b</sup> 1 Mood. & Rob. 393.

bound to provide the best possible road, but only such a road as the public have heretofore accepted and enjoyed, and that the learned judge should have so directed the jury.

Lord Denman, C. J. When a way has become a public road, the public have a right to have it in a state in which they can pass along it with ordinary convenience. How the way became a road, and what had been its original state, are not questions to be entertained in a proceeding of this sort. The direction, therefore of the learned judge was quite correct.

Patteson, J., concurred.

Coleridge, J. The indictment is in the common form, and the issue raised is whether the road is out of repair, and not as to the degree of repair that may be requisite. If the question for the jury to decide was, whether the road was as good as it had usually been, investigations of this sort would be more uncertain, and the evidence more conflicting than is usual in such cases.

Erle, J., concurred.

Rule refused.

*Evans v. Bell.* Michaelmas Term, 1847.

TROVER.—CONVERSION.

*An attorney had in his possession goods which had been deposited with him as security to cover a promissory note and a bill of exchange held by his client. Actions had been brought, the proceedings in which were stayed under an order for payment of debt and costs within an hour after taxation. Within the hour the money was tendered at the attorney's office, and the return of the goods demanded. The attorney, whose managing clerk had had the direction of the whole business, declined to accept the money and to restore the goods until that clerk, who was not at that moment in the office, should return.*

Held, that this was no act of conversion such as would maintain trover.

THIS was an action of trover to recover certain furs which had been deposited with the defendant under the following circumstances:—The defendant was an attorney, and a client of his held a bill of exchange and a promissory note, on each of which the plaintiff was liable. These instruments being overdue, the client required security to be given for their payment, and the plaintiff therefore deposited with the defendant the furs in question. There had been one action on the bill of exchange, which had been disposed of, and an action had been brought on the promissory note, and had proceeded to the delivery of the declaration. A judge's order was then obtained for the payment of debt and costs within an hour after the taxation of the costs, or for judgment to be signed as for want of a plea. The costs were taxed on the 12th of April, and within the hour a clerk to Messrs. Mayhew, the attorneys for the present plaintiff, went to the defendant's office, tendered payment of the money, and demanded the restoration of the goods. The

defendant answered that the business had been under the superintendence of his managing clerk, who would call on Messrs. Mayhew, receive the money, and return the goods; and he then refused to have any further communication with the clerk, between whom and himself there appeared to be some personal matter of difference. The clerk returned to Messrs. Mayhew, who, treating this as a refusal to deliver the goods, such as would in law amount to a conversion sufficient to maintain trover, directed him to issue the writ in this action forthwith. Within a quarter of an hour afterwards, the clerk of the defendant called at Messrs. Mayhew's to receive payment, and to restore the goods; but though he was paid the money payable under the judge's order, Messrs. Mayhew refused to receive the goods, as the writ in this action had been actually issued. The cause was tried at the sittings after last Trinity Term, before Lord Denman, when the above facts having been proved, his lordship expressed his opinion that they were not sufficient to constitute a conversion in law, and the jurors stated their opinion that there had not been a conversion in fact. The verdict was therefore entered for the defendant.

Mr. Sergeant Shee moved for a rule nisi for a new trial, on the ground of misdirection. The demand here was lawfully made when the tender was made, and the refusal then to deliver the goods was a refusal not warranted by law, and was therefore a good ground of action. It is admitted that demand and refusal do not of themselves constitute a conversion, but they are evidence of it, and here the evidence was complete. In *Cobbett v. Clutton*,<sup>a</sup> a refusal to deliver, under circumstances such as existed in this case, was held to amount to a conversion. If goods are bailed and not delivered upon demand, this is a conversion.<sup>b</sup> The tender of the goods afterwards did not purge the conversion.<sup>c</sup> The conversion here was complete by the refusal, and the subsequent tender of the goods did not take away the right of action.

Mr. Justice Wightman. It is admitted in the argument here that a demand and refusal do not of themselves constitute a conversion, but are only evidence of it. Now, what is the amount of that evidence here? The defendant did not insist on the right of keeping the goods, but merely declined to give them up for some little time till he could ascertain a fact which he was entitled to know. That was only a conditional refusal to deliver. It cannot be said that it showed an intention to convert the goods, or amounted to an assertion of any right to convert them. The defendant merely asked the attorney's clerk to wait till the defendant's managing clerk, who had had the whole conduct of the affair, should come into the office. I think the direction of the learned judge was right. Then what was the conclusion of the jury upon these facts? The *prima facie* evi-

<sup>a</sup> 2 Car. & P. 471.

<sup>b</sup> 1 Rol. Ab. 5, l. 50, 10 to 56 b.

<sup>c</sup> 1 Rol. Abr. 5 l. 40.

dence of the conversion was not sufficient in the minds of the jurors to establish an act of conversion; and it seems to me that, on the facts, the finding of the jury was right; so that on both grounds this rule ought to be refused.

Mr. Justice *Erle*. I think that the direction was right, and that the finding was right. It is clear law that a demand and a refusal only constitute evidence of a conversion, capable of being explained by proof of the circumstances under which they took place. Then what are the circumstances here? The defendant was the holder of these furs as the attorney for another person who was entitled to retain them as security for the debt and costs in an action which he had brought. The parties had been on the most hostile terms, and the clerk of the defendant was the person who had attended the judge when the order was made, and who was fully acquainted with all the circumstances of the case. The clerk of the opposite party came and tendered the sum which he said the master had allowed. The defendant said, I do not know anything about it, but my managing clerk, who does know, will come in within half an hour. That did not mean more than that, I cannot give up the furs till I know whether it is right to do so, and if it is right, I will give them up. This is the whole amount of the evidence. It is impossible to say that this is evidence of a conversion.

Mr. Justice *Coleridge*, who had only heard part of the argument, concurred in the principles stated by his learned brethren as those on which their judgment was founded.

Rule refused.

### Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

*Parker v. Baily*. November 18, 1847.

CA. SA.—NEW WRIT.

In June, 1844, the defendant was taken in execution on a ca. sa., upon which he petitioned the Bankruptcy Court under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, he obtained his interim order, and got out of custody. When he came up for his final order he applied to have his petition dismissed on the ground that he had entered into an arrangement with the plaintiff and the rest of his creditors to pay them certain money by instalments towards the liquidation of their claims. The commissioner, however, thought that one of the debts was contracted in fraud, and therefore did not dismiss the petition, but acted under the 24th section of 7 & 8 Vict. c. 96, and refused to name any day for granting the final order. The defendant continued at liberty until August, 1847, when the plaintiff issued a fresh writ of ca. sa. upon the old judgment, and took the defendant in execution.

Held, on a motion to set aside the execution on the ground of irregularity, and discharge the defendant out of custody, that the execution was regular, and that the defendant could well be retaken on the new writ.

Semble, that this would have been otherwise

if the petition had been dismissed under the agreement.

THIS was a rule obtained by *Charnock* on the 6th of November, calling on the plaintiff in this action to show cause why the writ of *capias* issued in this cause should not be set aside for irregularity, and the defendant discharged out of custody. It appeared by the affidavits used in moving for the rule that the defendant was in June, 1844, taken on a *capias* issued in this action. Upon this, he petitioned the Court of Bankruptcy under the Insolvent Debtors' Protection Acts, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96. He obtained his interim order, and was discharged out of custody. Before the time appointed for his coming up for his final order, he entered into an agreement with his creditors to pay a certain sum of money per month to the official assignee, which was to go towards the liquidation of his debts; and it was also agreed that the insolvent's petition should be dismissed at his own request. This agreement was reduced to writing, and signed by the plaintiff and other creditors, and they thereby agreed to execute any deed which might be necessary to carry out this arrangement. The defendant came up for his final order on the 9th of Dec. 1844, when, according to the defendant's affidavits, his petition was dismissed. This fact, however, was negatived by the affidavits used in showing cause against the rule, and it in fact appeared that the commissioner, observing a debt inserted in the defendant's schedule, which, in his opinion, was contracted in fraud, and without a reasonable expectation by the bankrupt of his being able to pay the same, he, under the 24th section of 7 & 8 Vict. c. 96, refused to make any final order, or to dismiss the petition. It also appeared, however, that neither the plaintiff nor any other creditor opposed the insolvent on this occasion. No order was made to retake the insolvent by the commissioner, and he remained at liberty until August, 1847, when he was again taken in execution on a fresh *capias* issued on the old judgment in this action. This was objected to, first, on the ground that the insolvent having been taken in execution on the judgment in 1844, and discharged out of custody under the act 7 & 8 Vict. c. 96, could only be retaken under an order of the commissioner made under that act; secondly, that if he could be retaken on the judgment, there ought to have been a *sri. fa* to revive the judgment it being more than a year old; and thirdly, that there ought to have been a return to the old writ of *capias* and a *alias* writ issued, and not an original writ as in this case.

*Bovill* now showed cause. This is a most extraordinary case, and if the rule be made absolute, all a debtor who is taken in execution on a judgment has to do is to petition the Bankruptcy Court, obtain his interim order, and get out of custody, and then if his petition be dismissed, or the final order refused, walk away and set the execution creditor at defiance. This absurdity, however, does not exist, and it is submitted that it is clear that, under the 6th

section of the act 7 & 8 Vict. c. 96, after the time has elapsed for which the interim order was granted, the debtor is not protected, and if he do not obtain a final order of protection, he may be retaken on the judgment.

*Patteson, J.* It was stated in the defendant's affidavits that the petition was dismissed by agreement.

*Bovill.* That was not so. In the first place, the document mentioned was not a binding one, not being signed by the defendant or stamped, and in fact, as appears by my affidavits, the petition was never dismissed, but the commissioner refused to make any final order or dismiss the petition, he being persuaded that one of the debts set out in the insolvent's schedule was contracted in fraud, and this being so, he had no jurisdiction to proceed further with the case. Then, as to the supposed irregularity, there is no irregularity, and if there was, the defendant ought to have come promptly to have taken advantage of it. Here there could be no return made, for if there had, it would have been *capri corpus*. This discharge of the insolvent was a statuteable discharge, and the proper course has been pursued to retake him. But even if there is any irregularity, the defendant should have come promptly; now here he was arrested on this *capias* on the 28th of August, and he only applies to set aside the writ now.

*Charnock* (who appeared to support his rule). But the defendant did apply to a judge in vacation.

*Bovill.* That does not appear on the affidavits, as it ought to have done if relied on as an excuse, *Goring v. Tute*, (7 M. & W. 142,) and if it did, then still they would be precluded now, for they went twice before the learned judge, (Mr. Justice Williams,) and having done so they are bound by his judgment, *Thompson v. Beck*, 4 Q. B. 759, and if the defendant is coming here on amended materials he cannot be heard. *Thynes v. Collinson*, 2 Dowl. & Lown. 449.

¶ *Charnock.* First, there is a clear irregularity in this writ. The plaintiff allows the defendant to be at liberty from September, 1844, to August, 1847, and then arrests him on a perfectly new writ on the same judgment. Now it is submitted that there ought to have been a return of the old writ, then a *sci fa*, and then an *alias* writ; at present there are two writs in the sheriff's office on the same judgment, which must be irregular. With regard to being precluded from making this application, the application before Mr. Justice Williams was to set aside the execution and not the writ; but then the plaintiff has mistaken his remedy; he had no right to issue this fresh *ca sa* at all, but should have applied to the commissioner to have the defendant re-committed to custody under the execution.

*Patteson, J.* I know it has somewhere been decided that the commissioner has that power. *Cole (amicus curie)*. That was in the case of *ex parte Partington*, (13 M. & W. 679.)

*Patteson, J.* I don't think there is any diffi-

culty in this case; it is clear that the insolvent's petition was not dismissed by the commissioner, but merely that he refused, under the 24th section of 7 & 8 Vic. c. 96, to make any final order or proceed further with the case, on the ground that the insolvent fraudulently contracted a debt without having the means of paying the same. I quite agree that if the defendant's petition had been dismissed, and the defendant discharged under any agreement with the plaintiff and the other creditors, that he could not have been re-taken on a fresh writ issued on the judgment, as has been done here, but that if the defendant did not pay the money according to the agreement, the plaintiff must have resorted to some other mode. In this case, there seems to have been a proposition made by the defendant to his creditors (but which was not binding upon him as not signed by him). This the commissioner would not be a party to, but instead of dismissing the petition he acted under the 24th section of the act, and refused to name any day for granting the first order. It is said that the act has not provided any mode under which the defendant can be retaken; that may be true, but this court will enforce that. The present case is more analogous to that of an escape than any other, and there no doubt the defendant can be re-taken on a fresh writ, and that the plaintiff cannot have an *alias* writ as the prior writ has been executed; as to a *sci fa*, that is only necessary where no execution has issued; here there has been an execution, but even if there were any irregularity here, the defendant cannot come now to take advantage of it, as he has not explained his delay by affidavit. I think, however, that there is no irregularity, but that the case is within the 6th section of the act, and that as the interim order was expired the defendant was liable to be re-taken, and I do not see in what other way that could be done than has been in this case. The case of *ex parte Partington*, is not precisely in point in this case, but it shows that the commissioner might, if he had chosen, have made an order to remand or retake the insolvent; that, however, he did not do. Under all the circumstances, I think the rule must be discharged, and as it is an appeal from a judge at chambers, with costs.

Rule discharged with costs.

### Common Pleas.

*In re Mary Jane Daly.* Michaelmas Term, 1847.

ACKNOWLEDGMENT OF A MARRIED WOMAN.—AUTHENTICATION ABROAD.—NOTARY'S CERTIFICATE.

*It is not enough in taking the acknowledgment of a married woman to a deed before commissioners abroad, to authenticate it by the certificate of a major-general in the army, verifying the affidavit of the certificate of the acknowledgment, and by an affidavit stating that there was no notary re-*



*siding at the particular place. There must also be an affidavit proving the hand-writing of the major-general, and that he really held that rank.*

Channell, Serjeant, moved that the acknowledgment of Mary Jane Daly, the wife of a drum-major, at present stationed at Secunderabad, in India, taken before commissioners specially appointed, together with the affidavit and certificate annexed thereto, might be received under 3 & 4 W. 4, c. 74, s. 79. The affidavit verifying the certificate of the acknowledgment purported to be sworn at Secunderabad, before one of her Majesty's justices of the peace and police superintendent, &c. There was then annexed the following, instead of, as usual, a notary's certificate :—"The certificate of Benjamin Lovell, Major-General, commanding the Hyderabad subsidiary force at Secunderabad, where there is no notary public, who certifies that the deponent, one of the special commissioners, &c., was sworn before James Robertson, one of her Majesty's justices of the peace, and that James Robertson is a justice of the peace, and authorized to administer oaths," &c. The attorney who procured the commission also made an affidavit stating that he had applied at the East India House to see if evidence could be obtained of there being no notary at Secunderabad, and that he had been informed by the head clerk there that Secunderabad was distant 200 miles from the nearest presidency, and that it was usual for major-generals to act as notaries public where none of the latter were to be found.

Wilde, C. J. There is some difficulty in giving effect to this under the act of parliament. The courts, as they cannot here ascertain the competency of persons administering oaths abroad, will adopt the certificate of an accredited officer, namely, a notary public, stating that the person administering the oath was competent to do it. But suppose no notary is to be found in the particular place, what course is to be adopted? In the present case the certificate of a gentleman holding the rank of a major-general in the army is offered as a substitute. That rank, no doubt, was some assurance of character and station; but when the court was asked to adopt the certificate as a sufficient substitute, they must take care that they have reasonable evidence of the rank of the person giving such certificate. Here there is an affidavit of the hand-writing of that person, or that he holds the rank of a major-general; and therefore, acting strictly within the spirit of the rule on the subject, and at the same time providing for a new instance requiring our discretion, we think we can hardly accept the documents now before us; but we are of opinion that the officer may receive the acknowledgment, upon a proper affidavit stating that the hand-writing is that of the person certifying, and that he is a major-general in the army.

Rule granted accordingly.

### Court of Bankruptcy.

*Re Bruce and Morrison.* Nov. 19, 1847.

DISPUTED ADJUDICATION.—PRACTICE.—CONSTRUCTION OF 5 & 6 VICT. c. 122.

*The five days allowed in the stat. 5 & 6 Vict. c. 122, s. 23, for disputing an adjudication, are to be calculated exclusive of Sunday, even if Sunday should not be the last of such five days.*

In this case *Sturgeon* appeared on behalf of Bruce, one of the persons against whom a fiat in bankruptcy issued, to dispute the adjudication.

*Bagley*, for the petitioning creditor objected, that the court had no authority to entertain the application, as more than five days had elapsed since the service of the notice of adjudication. A duplicate of the adjudication was served on the bankrupt Bruce, by leaving it at his dwelling-house with his wife, (after tendering the document to the bankrupt himself,) on Saturday the 13th November. The 23rd section of the stat. 5 & 6 Vict. c. 122, enacted, that a duplicate of the adjudication should be served on the person adjudged bankrupt personally, or by leaving it at his place of abode or business, and "that such person shall be allowed five days from the service of such duplicate, to show cause to the court authorized to act in the prosecution of the fiat under which such adjudication shall have been made, against the validity of such adjudication; and that if such person shall within the time hereby allowed in that behalf, show to the satisfaction of such court that the petitioning creditors' debt, trading and act of bankruptcy, upon which such adjudication shall be grounded, or that any or either of such matters are insufficient to support such adjudication," &c., then the adjudication shall be annulled. Here the bankrupt did not come within the time allowed by the act, and could not be heard to dispute the adjudication.

*Sturgeon*, contra. The notice of adjudication having been given on Saturday, the bankrupt had five clear days to dispute the adjudication. Sunday was a *dies non*, so that the five days begun to be reckoned on Monday, and the bankrupt was in time on Friday.

Mr. Commissioner *Goulbourn* said, that if Sunday was to be reckoned as one of the five days, the bankrupt was clearly too late, and the rules of the court did not help him. The 43rd rule (Nov. 12, 1842) did not apply to the number of days mentioned in the statute, but even if it did, the bankrupt was not within time. That rule declared, that where any particular number of days are mentioned for doing any act, the first day shall be reckoned exclusive, and the last inclusive, unless it falls on a Sunday. Here the last of the five days fell on a Thursday, unless the Sunday was to be excluded. The point, however, was so important, that he should consult one of his brother commissioners on it. The learned commissioner afterwards stated, that he had consulted Mr. Commissioner *Holroyd*, and they concurred in thinking, that as this was a remedial enact-



ment, they were bound to give it a liberal construction. The statute provided, that the person adjudged bankrupt should be allowed five days "to show cause against" the adjudication. Now, Sunday was not a day upon which the bankrupt could show cause, and they therefore considered it ought to be excluded from the computation. No doubt, where a greater number of days than seven were mentioned in a statute, as that must include a Sunday, if the legislature made no exception for Sunday, a

different rule of construction might apply. But if Sunday was to be reckoned in the present case, the bankrupt would really have only four days to show cause. Upon these grounds he was of opinion that the bankrupt was in time to dispute the adjudication.

Objections were then taken by the bankrupt's counsel to the evidence of the petitioning creditor's debt, and the act of bankruptcy, both of which were overruled, and the adjudication was confirmed.

## BUSINESS OF THE COURTS.

### Privy Council.

The Judicial Committee of the Privy Council will meet for the dispatch of business on the following days, viz :—

|          |       |               |
|----------|-------|---------------|
| Thursday | . . . | Dec. 2, 1847. |
| Friday   | . . . | 3 "           |
| Monday   | . . . | 6 "           |
| Tuesday  | . . . | 7 "           |
| Thursday | . . . | 9 "           |
| Friday   | . . . | 10 "          |
| Saturday | . . . | 11 "          |

|          |       |           |
|----------|-------|-----------|
| Monday   | . . . | 13, 1847. |
| Tuesday  | . . . | 14 "      |
| Thursday | . . . | 16 "      |
| Friday   | . . . | 17 "      |

AT TEN O'CLOCK.

By order of the LORD PRESIDENT.

Council Office, Whitehall, Nov. 22, 1847.

### LIST OF APPEALS.

Ready for hearing before the Judicial Committee of the Privy Council.

|  |   | SOLICITORS OR PROCTORS.                       |  |
|--|---|---|--|
| APPELLANTS.                                  | RESPONDENTS.                                    | APPELLANTS.                                   | RESPONDENTS.                                       |
| Rany Srimuty Debial . . . .                  | Rany Khoond Suta Bengal, April 13, 1847 . . . . | R. Clarke . . .                               | Lawfords.  |
| Logan . . . .                                | Lemesurier . . . .                              | Canada, May 19, 1847 . . . .                  | Oliverson & Co. Simpson & Cobb.                    |
| Flint . . . .                                | Walker . . . .                                  | New South Wales, May 22, 1847 . . . .         | Hutchison . . . Walton.                            |
| Michell . . . .                              | Thomas . . . .                                  | Prerogative Court, May 22, 1847 . . . .       | Nelson . . . . Slade, Wadson & Crickitt.           |
| Bank of Australasia . . . .                  | Breillat . . . .                                | New South Wales, May 25, 1847 . . . .         | Farrer . . . . Freshfield.                         |
| Cameron . . . .                              | Butts . . . .                                   | British Guiana, May 25, 1847 . . . .          | Jones & Trinder, (ex parte respondent.)            |
| Green . . . .                                | Ryan . . . .                                    | High Court of Admiralty, May 25, 1847 . . . . | Stokes . . . . Puckle (ship Seeringaputani.)       |
| Store . . . .                                | Barnes . . . .                                  | Court of Arches, May 23, 1847 . . . .         | Tebbs . . . . Toller.                              |
| Davis . . . .                                | Barrett . . . .                                 | Jamaica, June 24, 1847 . . . .                | Teesdale and Symes . . . Clayton & Cookson         |
| Representatives of the Count de Wall . . . . | Commissioners of French Claims . . . .          | June 28, 1847 . . . .                         | Beavan and Anderson . . . Solicitors to Treasury.  |
| Raja Burdakanth Roy . . . .                  | Ram Tunnoo Bose Bengal, July 9, 1847 . . . .    | Milliard . . . .                              | Lawfords.  |
| Attorney-Gen. of Jamaica . . . .             | Manderson . . . .                               | Jamaica, August 2, 1847 . . . .               | J. Brooke . . . T. Land.                           |
| Anstruther . . . .                           | Arabin . . . .                                  | Ceylon, August 27, 1847 . . . .               | Farrer . . . . Wilde and Rees.                     |
| Eccles . . . .                               | Brown . . . .                                   | Trinidad, Nov. 6, 1847 . . . .                | Hale, Boys, and Austen . . . (Ex parte appellant.) |

### Queen's Bench.

THIS Court will, on Saturday, 27th Nov. inst., Friday, the 3rd, Saturday, the 4th, and on Monday, the 6th days of Dec. next, and four following days,

hold sittings, and will proceed in disposing of the business in the Crown Paper, Special Paper, and New Trial Paper, and will also hold a sitting on Saturday, the 11th day of Dec. next, at 12 o'clock, and give judgment in cases previously argued.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 4, 1847.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## PROPOSED AMENDMENT OF THE LAW OF DEBTOR AND CREDITOR.

THE Report of the Committee appointed by the Society of Merchants, Traders, and Bankers, for effecting an amendment of the Laws relating to Bankruptcy and Insolvency, states, that the committee had a communication from Mr. Vizard, the Lord Chancellor's secretary, announcing that the subject was under the Lord Chancellor's consideration, and that his lordship desired to receive information from the traders of the country, which, the committee significantly add, “the vacillating course of legislation during the last few years proves to be necessary.” Such a communication, made at such a period, justifies the expectation, that Lord Cottenham is about earnestly to apply his vigorous and experienced mind to the construction of a legislative measure, with the view of remedying what the first resolution of the great city meeting, in language not too strong, describes, as “the evil under which the country is now suffering from the *vicious* and *disgraceful* state of the Law of Debtor and Creditor.” We earnestly hope that the measure now in preparation, under the superintendence of the highest legal functionary, and with the sanction and support of the government, will effect an *amendment*, not merely a *change* in the law, and that those who have undertaken the onerous duty of constructing a new system of bankrupt and insolvency law will avoid the errors which have rendered the course of modern legislation upon this subject, at once odious and injurious to the great body of the commercial and trading community.

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The “vacillating course of legislation” justly complained of, is to be ascribed in a great degree to the absence of any defined or acknowledged principles. Now, it was thought the debtor was too severely used; again, it was said the creditor was not sufficiently protected; and one act of parliament followed the other in rapid succession, the latter imperfectly undoing that which the former had as imperfectly endeavoured to effect, until the law has become like a piece of ill-jointed patchwork, confused, inconsistent, and wholly unfitted for the exigences of the community.

Concurring generally in the principles sought to be established and carried into effect by the important and influential society, whose views are developed in the report we last week laid before our readers, and participating in the sentiment expressed by more than one of the speakers at the meeting at the London Tavern, that the matter should not be left exclusively in the hands of lawyers, we must, nevertheless, remind those who are applying their zeal and energy so beneficially to this great question, that without the zealous co-operation and assistance of lawyers of experience and practical knowledge, they will find it impossible to carry out their own objects, even where those objects are accurately defined and supported by unanimous approval. An intimate acquaintance with the state of the existing law, its operation and defects, is an indispensable requisite in framing remedial measures, and to the evident absence of this species of information, many of the mischiefs arising from modern legislation are to be traced. Every one has been consulted but those who, from their peculiar

avocations, were necessarily the best acquainted with both the principles and details, and the result is, that laws have been passed which are found to operate in a manner entirely adverse to the expectations and intentions of those by whom they were introduced and supported. Had competent practical lawyers been consulted, this, at all events, could never have occurred.

Finding many of the principles consistently—though it may be feebly—advocated in this publication, now recognized and zealously promoted by those most interested in their adoption, we may be permitted to indulge in the language of friendly warning on one other point. The Society of Merchants, Bankers, and Traders is composed chiefly of persons influenced by the feelings, wishes, and interests, of creditors. Powerful, intelligent, and right-minded, they are still but a class, and the laws should be framed, not with a view to the interests of a class, but of the whole community. The justice and expediency of the principle asserted by the society, that the unfortunate debtor should be protected, and the fraudulent debtor punished, will be universally admitted, but the legal provisions by which that principle should be carried out, afford a very wide field for discussion, in which the views of the debtor, as well as the creditor, are fairly entitled to consideration.

With these preliminary observations, we proceed to the consideration of the measures which the society, as we understand, suggest for the improvement of the Law of Debtor and Creditor. The most important of the proposed changes is, the restoration of arrest for debt on mesne process, which, as our readers are aware, was abolished by the stat. 1 & 2 Vict. c. 110.

Mr. Commissioner Fane and Mr. Amory have expressed their sentiments on this question clearly and concisely, and those sentiments appear to have been received with general approbation at the meeting at the London Tavern. Mr. Fane writes as follows :—

“ Arrest for debt ought, in my opinion, to be restored with this modification,—that no writ for arrest should issue, except on the order of a commissioner of the Court of Bankruptcy, and that he should never issue it except in a clear case of ascertained debt clearly due. Arrest is a process which is cheap, sudden, and effective. There must be either seizure of the property or seizure of the person. Seizure of the property is always a dangerous process, because what seems to belong to the debtor may have been secretly assigned to a friend. Seizure of the person involves no mistake, for every

creditor must know his debtor by sight. The officers of the law should have power to seize the person of the debtor during proper hours, even in his own house, and for that purpose, if necessary, to break open the outer door.”

Mr. Amory is reported to have expressed his concurrence with Mr. Fane in these words :—

“ He was one of a small minority of the learned profession to which he belonged who believed, with Mr. Commissioner Fane, that the entire and careless and reckless doing away with the law of arrest was much to be regretted. A great deal had been truly said about the improper manner in which parties were arrested for fictitious debts. He would give every person arrested every fair and every proper protection ; but in numerous instances that had come under his observation, he had found that debts were irretrievably lost from the want of being able to lay hold of the body of the debtor ; and though he was advocating a principle that was not popular in the profession to which he belonged, he would, nevertheless, go along with Mr. Fane in the sentiments which he had expressed on this subject.”

Now we are not prepared to agree with Mr. Fane, that the Commissioners of the Court of Bankruptcy are exactly the persons who ought to be entrusted with the exclusive power of ordering the issue of writs of arrest ; nor shall we wait just now to consider how far it may be desirable to alter the common law by enacting, as he suggests, that the officers of the law should have power to break open the outer door in order to seize the person of the debtor ; but we do concur with him in thinking that the power of arresting the debtor at an early period, under proper restrictions, is mercy to him, as well as justice to the creditor ; and we venture, with great deference and respect for Mr. Amory, to doubt whether he is correct in assuming that his views on this subject are at variance with those generally entertained by the members of the legal profession. We can only say, that the announcement of similar views in this publication, has not occasioned those remonstrances which we might have reasonably expected, if the declaration of our sentiments was not in accordance with the general opinion of the profession.

Another proposition suggested at the meeting alluded to, and which appears to have met very general concurrence, was, that a debtor unable to meet his engagements should be at liberty to call his creditors together, and propose a settlement or composition, to be carried into effect under the sanction and superintendence of the Court of Bankruptcy. The details of the proposed

measure are not very clearly stated. Mr. Commissioner Fane thus expresses himself :—

“ Much, also, ought to be done for the honest debtor, willing to do the best justice in his power to his creditors. He should be enabled to call his creditors together under the sanction and superintendence of the Court of Bankruptcy; but the interference of that court should, in the first instance, be of a limited character. It should announce, not that he was a bankrupt, but that he was desirous of laying the state of his affairs before his creditors. It should order no seizure of his property; it should cause no interruption of his business. All that it should do, in the first instance, should be to superintend and sanction the choice of inspectors; and unless the inspectors, representing the majority, should be of opinion that the case was one which called for public bankruptcy, or some creditor could show that the debtor had acted fraudulently, there should be no further publicity, nor any further interference on the part of the court, than some species of sanction, by authority, of what had been done by consent.”

Mr. Amory, whose experience entitles all that falls from him to much respect, is reported to have delivered himself on this subject as follows :—

“ There were many things in the letter of Commissioner Fane in which he entirely concurred, but there was one of more importance than all the rest, to which he would briefly refer,—that of allowing a formal and legal settlement by parties out of court when there had been a certain sanction given to it by the Court of Bankruptcy. It comported with his experience that this mode of settlement would be highly satisfactory. Thirty years ago, he was engaged on the part of a large body of merchants and traders, met in that very room, for the purpose of amending the law of bankruptcy in Scotland, and this circumstance had given him some experience on the subject. There was one thing in the Scotch law very analogous to what Commissioner Fane referred to. One of the provisions of the Scotch law was, that after the first meeting the subject of the commission was called upon to propose a private mode of settlement of his affairs—to propose a composition or some kind of settlement. If he did so, the propriety, fairness, and fitness of that composition was examined by the authorities named in the commission, and if it received their authority, it was binding on the creditors at large. It would be in the experience of most gentlemen, that the greatest difficulty that existed in practically working out the law of insolvency was this—that if a large house fails, and if an arrangement is made by which their affairs are to be wound up out of court, perhaps after the greatest exertions have been made, when 99 out of 100 creditors have given their consent to the arrangement, the

hundredth man stands out, not for any good reason, but that, by standing out, he may get his claim paid, and thus the whole arrangement falls to the ground.”

Upon this proposition we shall only observe, that its merit depends altogether upon the provisions by which it is carried out. An attempt has been made to embody a somewhat similar principle with respect to insolvents who are not traders, in the statute, known as “ The Debtor and Creditor’s Arrangement Act,” (7 & 8 Vict. c. 70). The machinery under which it is proposed to effect “ arrangements ” under that act, however, is so clumsy and inefficient that it has been rarely resorted to, and to this circumstance, no doubt, it may be ascribed that its defects are not generally felt, and that it has been so long allowed to encumber the Statute Book.

One other practical suggestion was made at the public meeting, in accordance with views thrown out in a recent number, as to the difficulty which the law imposes in proving an act of bankruptcy. Mr. Johnson, (one of the official assignees of the Court of Bankruptcy) said :—

“ In order to avoid many of the evils complained of, a simple enactment would suffice—making the suspension of a house of itself an act of bankruptcy. If that were to be law, no payment should be made afterwards, and the practice of parties giving away their property after suspension would be completely put down.”

Such an enactment appears to us to be unobjectionable in principle, and calculated to remove the unnecessary obstacles which creditors now encounter who desire to divide the assets of insolvent firms amongst those who are equitably entitled.

We are forced to conclude without pointing out to the committee a very serious error which appears in their report with respect to the operation of the provision, contained in the Small Debts Act, (8 & 9 Vict. c. 127,) empowering imprisonment for 40 days for debts under 20*l*. The practical effect of this enactment is very different from that which the committee appear to contemplate, and demonstrates how essential it is to the ends of justice that laws affecting all classes of the community should be prepared under the superintendence and revision of those who have no class interests to promote, and no class prejudices to blind them. We shall return to this subject on an early opportunity.

## ILLNESS OF THE LORD CHANCELLOR.

THE state of the Chancellor's health is still such as to prevent his lordship from performing his public duties. The rumours have been revived, that it is intended to put the Great Seal into commission, but it is to be hoped that Lord Cottenham's speedy convalescence will render such a measure unnecessary.

The last occasion on which the Great Seal was put in commission was that of the change of administration, on the 8th April, 1835, when Sir Robert Peel, Lord Chancellor Lyndhurst, and the other ministers, with Sir F. Pollock, Attorney-General, and Sir William Follett, Solicitor-General, tendered their resignations to his Majesty King William the 4th. in consequence of repeated majorities against them on the question of appropriating the supposed surplus of the Irish Church Revenues. Sir C. C. Pepys, Sir L. Shadwell, and Sir J. B. Bosanquet, were then appointed Lords Commissioners of the Great Seal.\* That commission continued till the 16th Jan., 1836, when Sir C. C. Pepys was elevated to the peerage and the woolsack.

## NEW BILLS IN PARLIAMENT.

### RAILWAYS.

THIS bill was brought in the 26th November, 1847, "To give further Time for making certain Railways." It recites that divers acts of parliament have been passed for making railways, and in such acts respectively certain periods of time are limited within which only the powers thereby granted, whether for making the railways or for the compulsory purchase of the lands therein referred to, can be lawfully exercised: And that it is expedient that in certain cases further time be granted for the purposes aforesaid. It is therefore proposed to enact—

1. That if any railway company or person authorized by any act of parliament to construct a railway or any works connected with a railway, or to purchase lands for any such purpose, desire that the period limited by such act for the completion of such railway or works, or for the purchase of such lands, be extended, such company or person may, at any time within two calendar months after the passing of this act, make application, in writing, to the commissioners of railways, setting forth what extension of time is desired by them or him, and to what part of the railway, or the works or lands connected therewith, the same is intended to apply, and the grounds on which such application is made.

2. That if it appear to the commissioners that there may be sufficient grounds for entertaining such application, they shall require the company, or person making the same, to give notice of such application having been made, by advertisement, inserted in such form as shall be approved of by the said commissioners, once in the London, Edinburgh, or Dublin Gazette, accordingly as such railway or works or lands are in England, Scotland or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such railway or works or lands to which the extension of time is intended to apply is situated; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed extension of time, and who desires to object thereto, may bring such objections before the said commissioners.

3. That, upon proof, to the satisfaction of the commissioners, that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the commissioners, and after considering all such objections, if any, which have been brought before them, the commissioners may, if they think fit, by warrant under their seal, and signed by two or more of the commissioners, extend the period allowed by any such act or acts as aforesaid, whether for the completion of such railway or works or for the compulsory purchase of lands for that purpose, for such further time as the commissioners think fit, not exceeding two years from the expiration of the periods so allowed by such act or acts respectively; and they may so extend such periods respectively either as to the whole of such railway or works, and the whole of such lands required for the same, or as to so much of such railway or the works, or the lands connected therewith, as shall be specified for that purpose in such warrant.

4. That when any such warrant as aforesaid is granted by the commissioners, the act of parliament authorizing the construction of the railway or works mentioned or referred to in such warrant, shall, as to the portion of railway or the works or lands described thereby or comprised in such warrant, be construed as if the extended period or periods of time mentioned in such warrant had been by such act limited, as the period or periods respectively within which the powers of such act might lawfully be exercised, whether for the construction of such railway or works or for the compulsory purchase of the lands required for the same, instead of the periods mentioned in such act respectively.

5. That this act shall not have the effect of reviving any powers which had expired before the making of such application; and that it shall not prejudice or affect any contract or agreement entered into before the passing of this act.

6. That within one calendar month after the day on which any such warrant as aforesaid is

\* See 11 L. O. 338.

granted by the commissioners, they shall cause notice thereof to be inserted in the London, Edinburgh, or Dublin Gazette, accordingly as the railway, works or lands mentioned therein, is or are in England, Scotland, or Ireland.

7. That whenever any such warrant as aforesaid is granted by the commissioners, for extending the time within which any of the powers given by any such act or acts may lawfully be exercised, the several owners and occupiers of land and other persons entitled to compensation for the lands required to be taken, or which the company have power to take for the purposes of the railway, or for the damage severally sustained by them by reason of the execution of the works connected therewith, shall be entitled to make a claim in respect of the damage (if any) sustained by them respectively by reason of such extension of time, and of any delay in taking the lands and completing the works necessary for the construction of the railway: which claim, if not settled by agreement between the party making the claim and the company, shall be settled by arbitration, or by the verdict of a jury, at the option of the party making the claim, in like manner as is provided in disputed cases of compensation by the "Lands Clauses Consolidation Act, 1845," where the claim arises in England or Ireland, or by the "Lands Clauses Consolidation (Scotland) Act, 1845," where the claim arises in Scotland; and all justices, arbitrators, umpires, juries, and others who shall settle any case of disputed compensation arising out of the exercise of any of the powers contained in any such act or acts of parliament, in respect of which any such claim is made, shall be bound to take such claim into consideration, and shall award such additional compensation as to them respectively shall appear to be just in every case in which it shall appear to them respectively that the person making such claim is aggrieved by such extension or delay.

8. Act incorporated with 8 & 9 Vict. cc. 18, 19.

9. That no railway company authorized by act of parliament to construct a railway or any works connected with a railway, who have not before the 27th November, 1847, entered into any contract or agreement for the execution of any works which they were for the first time authorized by such act to construct, shall enter into any such contract or agreement within 12 calendar months after the passing of this act, excepting always from this enactment contracts and agreements for the construction of any part of any railway which by the act authorizing the construction thereof is substituted by way of deviation from the line as originally proposed and authorized by some previous act, and which is abandoned in favour of such deviation, and also contracts and agreements for the construction of such other works which the company shall be authorized to proceed in constructing by the consent of so many of the shareholders as hold at least three-fourths of the whole number of shares in the said railway,

such consent to be signified in writing, under their hands respectively, within six weeks after the passing of this act; and all contracts and agreements entered into in contravention of this enactment shall be utterly void and of none effect: and a certificate of such consent having been duly given within the time aforesaid, under the hand of the chairman, or two of the directors of the company, and countersigned in each case by the secretary of the company, shall be deposited in the office of the commissioners of railways; and such certificate, or a copy thereof, certified under the seal of the said commissioners to be a true copy, shall be received as evidence in all courts, and before all justices and others, that such consent was duly given within the time aforesaid.

## NOTICES OF NEW BOOKS.

*The Rights and Liabilities of Husband and Wife at Law and in Equity, as affected by Modern Statutes and Decisions.* By JOHN FRASER MACQUEEN, Esq., of Lincoln's Inn, Barrister-at-Law. London: S. Sweet. 1847.

MR. MACQUEEN, who is already advantageously known to the profession and the public as the author of an able and elaborate treatise on "The Practice of the House of Lords and Privy Council," has now produced the first part of a treatise on the Law affecting the relation of Husband and Wife, a subject which he justly observes in his preface, "has been singularly fertile in the production of legal difficulties and judicial conflict." The present volume relates to the rights and liabilities arising out of the marriage contract as governed by the general law, independent of those which arise from special arrangements between parties, founded on settlements, deeds of separation, &c., and which we collect it is the intention of the learned author to treat of in a forthcoming volume.

The scope and importance of the subject discussed in the present volume will be better understood when we state that they comprehend the rights and liabilities arising from marriage, from acts done in the marriage state, and from the dissolution of marriage by the death of either party or by parliamentary divorce. The immediate subject of the treatise is preceded by a short but remarkably interesting chapter on the History of the Marriage Contract, and some preliminary remarks upon the statutes 4 Geo. 4, c. 76, and 6 & 7 W. 4, c. 85, so far as their provisions may operate to produce a forfeiture.

In endeavouring to present our readers

with an outline of the work, we must not omit to mention that within a space of somewhat less than 50 pages, the learned author has contrived to give a practical summary of proceedings on "Alienations by Married Women," with ample directions and forms, which cannot fail to prove highly convenient and useful. It seems that not less than 6,000 acknowledgments are taken annually, and we believe it is correctly stated that this "is the first effort yet made to methodise and elucidate the system established under the Fines and Recoveries Act, and the rules of the Common Pleas passed in pursuance thereof."

Mr. Macqueen's chief object appears to have been to give his treatise a modern and a practical character, and with this view all the leading cases, and particularly those of recent occurrence, are referred to, and in many instances the principles upon which the decisions of the courts proceeded in those cases, are ably and instructively elucidated. The introductory chapter on the "History of the Marriage Contract," to which we have already alluded, contains much curious and useful information upon topics, the investigation of which appears to be peculiarly congenial to the mind of the writer. As a fair specimen of the manner in which this part of the subject is treated, and an example of the author's style, we subjoin an extract from his commentary upon the Ancient Marriage Law of England, a matter upon which he has contrived to throw much additional light:—

"Upon the late case of the Irish or Presbyterian marriages, the great question in the House of Lords was, whether the ancient matrimonial law of England was the same as that which had obtained in the rest of Europe anterior to the decree of the Council of Trent. That decree, be it observed, had authority only in those countries which acknowledged the papal supremacy. It had no reception in England, being dated nearly 30 years subsequent to the breach between Henry VIII. and the Pope. The matrimonial law of England, therefore, continued on its former footing. By that law clandestine marriages were allowed; but they were not attended with the same effects as marriages solemnized in *facie ecclesiæ*; and herein lies the peculiarity of the old English law, when viewed in contradistinction to the ancient continental law. By the continental law, prior to the Council of Trent, a private marriage was as good as a public one. By the law of England, until altered by the statutes to which we are about to advert, a private marriage, that is to say, a marriage not solemnized in *facie ecclesiæ*, was good only for certain purposes. Thus, a private or clandestine marriage, or, as it was sometimes called, a

verbal contract, (which might either be by words of present consent or by words of promise followed by cohabitation,) was, in the first place, not sufficient to give the woman the right of a widow in respect to dower; nor, secondly, to give the man the right of a husband in respect of the woman's property; nor, thirdly, to render the issue begotten legitimate; nor, fourthly, to impose upon the woman the disabilities of coverture; nor, fifthly, and lastly, to make the marriage of either of the parties, (living the other,) with a third person void, all these consequences being confined exclusively to marriages solemnized in *facie ecclesiæ*. Nevertheless, the effects of clandestine marriages were very remarkable, though falling greatly short of those which attached upon regular matrimony. For it is now agreed, and has indeed been decided by the House of Lords, that at common law, a contract entered into between man and woman by words of present consent was indissoluble. The parties could not release each other from the obligation. Either party, too, might by a suit in the spiritual court compel the other to solemnize the marriage in *facie ecclesiæ*. It was so much a marriage, that if they cohabited together before solemnization, they could not be proceeded against for fornication, but merely for a contempt. If either of them cohabited with another person, the parties might be proceeded against for adultery. The contract, moreover, was considered to be of the very essence of matrimony, and was therefore and by reason of its indissoluble nature, styled in the ecclesiastical law *verum matrimonium*, and sometimes *ipsum matrimonium*. Another, and a most important effect of such contract was, that if either of the parties afterwards married with another person, solemnizing such marriage in *facie ecclesiæ*, the same might be set aside even after cohabitation and of the birth of children, and the parties might be compelled to solemnize the first marriage in *facie ecclesiæ*.

"So, a contract of marriage *per verbo de futuro* followed by cohabitation, produced precisely the same consequence as a contract *per verbo de presenti*. For where a *copula* ensued upon the promise, the present consent essential to matrimony was supposed to be at that moment exchanged between the parties; a legal presumption which, though but slightly founded in nature or reality, was held to be abundantly recommended by its equity and the just check which it imposed upon perfidy.

The ancient law of England, therefore, with respect to the constitution was very peculiar, and no more to be understood by reference to the continental system, or even to the practice of the sister country of Scotland, than the law of real property or any other branch of our jurisprudence. And this I take to have been the great point established in the case of the Irish marriages above referred to; which though carried in the House of Lords with infinite difficulty and in spite of many strong and, as some may think, insuperable arguments opposed to it, must henceforth be regarded as settled and



concluded in all legal reasoning on the subject; the short general proposition derivable from the adjudication being, that by the ancient law of England a marriage by private contract was good only for certain purposes, and those not the most important ones; no marriage being absolutely perfect until celebrated in *facie ecclesie* by the intervention of a person in holy orders; that is to say, orders conferred by Episcopal authority.<sup>b</sup>

In treating of "the wife's authority to bind her husband when living apart from him," the several cases are supposed, of a wife being separately provided for, of a suit pending in the Ecclesiastical Court by the wife against the husband, and of a wife having committed adultery. The question whether when the husband is discharged, as in the last mentioned event, the wife herself becomes liable for her own contracts, is rather slightly noticed. The judgment of Lord Kenyon in *Marshal v. Ratton*, (8 Term Rep. 547,) is referred to, and the dictum of Mr. Justice Buller in *Cox v. Kitchen*, (1 Bos. & Pul. 339,) that as soon as the husband was released the wife acquired a capacity of binding herself, is cited with approval. We have reason to believe, however, that it is the opinion of the highest authorities in common law, that after a wife elopes from her husband or is guilty of adultery, there are no means of enforcing contracts made with her. Her misconduct puts an end to her authority to bind her husband, and her coverture operates as a bar to her civil liabilities.

We hope to find an early opportunity of returning to Mr. Macqueen's work, which is not merely deserving of an attentive perusal, but promises to hold a high place in legal literature. Indeed, it is matter of congratulation that a subject of such interest and importance should have fallen into such competent hands.

## THE COMMERCIAL FAILURES AND THE COURT OF BANKRUPTCY.

MR. EDITOR,—I quite concur in the observations you made in your number of the 13th November, as well as in a preceding one, on this subject; and I think the concluding observation in your last number, "Whether this

new system of administering bankrupt estates under the superintendence of a committee, and dispensing with the assistance and protection afforded by the bankrupt laws, will ultimately prove advantageous to the bankrupts themselves or to the general body of creditors—to those who have no tricks of trade they desire to control, and no exposure to apprehend—is, to say the least, doubtful," is worthy particular attention.

The impression on your mind is sufficiently obvious. There is no doubt that the bankrupt law was originally made for the protection of traders; to relieve them from oppressive proceedings by their creditors when unable to pay their debts, so that they should not be at the mercy of such creditors. At the same time arrangements were made for securing to the creditors the full advantage of every penny to which the bankrupt was entitled at the time of his bankruptcy. Although the intention of the law has in both respects been from time to time perverted, the same principle still exists on the philosophical principle, as it may be called, of the present bankrupt law, however much the modern machinery may vary from its early prototype.

The inquiry, therefore, arises with regard to the present subject, on these two points of the bankrupt laws; 1st, whether these private arrangements are as beneficial to the traders as an application by them or their creditors, to the bankrupt law would be? and 2ndly, whether such arrangements are as beneficial to the creditor? My answer to the first question is, that they are *more* beneficial to the trader; and to the second, that they are *less* so to the creditor. My reasons for this opinion are the following:—I believe it will not be questioned by any one acquainted with the subject, that these private arrangements are equally, and in most cases more, expensive than the proceedings under a fiat. The various deeds necessary to make a complete assignment of large partnership estates for the benefit of creditors; the charges of the accountants now usually employed; the deeds of arrangement, composition and release, long and costly, amount to, and are always set down at a large sum; and I think I am quite right in stating, that the costs of a private arrangement are quite equal to those in bankruptcy proceedings, and I doubt not in many cases exceed them. Therefore, on the ground of expense, which often alarms creditors, the proceedings may be considered as equal.

I will then come to the next of the points above referred to. Is this arrangement as beneficial to the creditors as a fiat would be? I have no hesitation in saying it is less so, whether there are tricks of trade, you refer to, to be concealed or not. But I am afraid in most cases there are reasons most pressing for an arrangement without any exposure. I will give a case in illustration of one of those where a private arrangement is most desirable, and it will be recognized as a familiar one by many of your readers.

I will suppose a large firm, Messrs. A. B.

<sup>b</sup> Mr. Macqueen in a note on this passage admits, that the views here suggested do not correspond with the theory of Sir Wm. Scott's famous judgment in *Dalrymple v. Dalrymple*, 2 Hagg. Cons. Rep. 54; but he assumes that the judgment in the Irish marriage case, *Queen v. Millis*, 10 Cl. & Fin. 534, establishes the view he has adopted.



C. and Co., East India merchants. They find themselves in difficulties. Their names have stood high in the mercantile world, and no less so in the fashionable world. A. is in the Senate. In the provinces A. and B. are great personages. They therefore recoil from the idea of having their names gazetted like a petty shopkeeper, a common tradesman, "a dealer and chapman;" and besides, they know with a little clever management, (and our merchants are clever persons—and the cleverest and quickest man in the city is the successful one,) they can be replaced almost in the same position as before. The amount for which A. B. C., and Co. have failed, (I beg their pardon, they have in consequence of the extraordinary pressure of the present time merely *suspended payment*;) is most respectable, it may be 300,000*l.*, 400,000*l.*, or perhaps 1,400,000*l.* It is not considered discreditable to *suspend payment* for such a sum. Their city friends have that feeling, and their west-end friends only wish that they could get credit for such an amount. They suspend payment. The creditors, some really anxious for the debt due to them, others having a fellow-feeling for A. B. C. and Co., (although they do not let that appear, their own time not having yet arrived,) hear of their suspending payment; and before they have time to advise with friends, or their solicitors, receive a polite circular from Messrs. O. P. and Q., requesting them to attend a meeting, when a statement of the affairs will be submitted to the creditors.

Mr. Careful, a creditor, attends the meeting. He is a creditor for a large amount, and one to him of vital consequence. A statement is submitted, whereby it is shown in most accurate figures, that the difficulties have arisen from A. B. C. and Co. having purchased large estates in Ceylon, or Mauritius; that their bad debts amount to a very large sum, but making all allowances, including 1,500*l.* for expenses of winding up, there would be a dividend of 10*s.* in the pound. Mr. Careful looks blank; expresses his astonishment that A. B. C. and Co. should have so far departed from the fundamental principle of good trading, "that merchants should keep their capital floating, and should not lock it up in the purchase of estates;" and he does not understand how, with any degree of ordinary prudence, the proportion of bad debts should be so large. Mr. D., of the firm of D. E. F. G. and Co., creditors to a large amount, assists the accountants in explaining that the firm originally acquired the estates, partly in liquidation of a doubtful debt; and that the large amount of bad debts arose principally from an unsuccessful speculation in sending out a considerable consignment of muslins and silks to Otonga, a new port *opening up* the prospect of a commercial enterprise which had proved unfortunate; as it was ultimately discovered that the inhabitants wore nothing but napkins round their loins.

Mr. D., for himself, thought the explanations very satisfactory, and he urged the creditors to agree to the proposed arrangement that Messrs.

O. P. Q. should proceed to wind up the affairs under the superintendence of three or four of the creditors.

What can Mr. Careful do? His debt is perhaps less than a hundredth part of the whole amount. He takes time to consider—is privately urged, and at last assents to the arrangement.

What is the result he is soon informed—that, in consequence of the estate at Mauritius, or Ceylon, being further depressed in the market, and other circumstances, it is ascertained that the estates will not realize what was expected; that it is doubtful whether there will be a dividend of 5*s.* in the pound, and that only to be realized in three years by management of the estates. He is then told that the brother of A. is a creditor for 15,000*l.*; the two sisters of B. each for 10,000*l.*; the trustees of the settlement of C.'s wife for 20,000*l.* That they are willing to postpone their claims, the last under an indemnity they are to receive from some friend of the family, and if Mr. Careful and the other creditors will take 5*s.* in the pound, friends of the firm have agreed to come forward and advance the money necessary to pay him and the other creditors. Mr. Careful sees he has been led into a false position; that he ought to have issued a fiat at once, when these claims of brother, sisters, and wife would have been sifted; when, perhaps, some rich relative drawing largely from the firm might have been proved to have been a sleeping partner, and Mr. C. and the other creditors might have got at least the 10*s.* in the pound, if not the whole of their debts. He takes the 5*s.* in the pound, the other creditors also the same from the like feeling as induces Mr. Careful. Ere long Mr. Careful receives a circular stating, that the firm of Messrs. A. B. C. and Co. having been dissolved, in consequence of the retirement of Mr. B., the business will in future be carried on under that of Messrs. A. C. E. and Co., who request a continuance of his esteemed favours.

Here ends the farce, or rather the swindle. The Mauritius estates look up; debts set down as bad turn out wonderfully good; and Messrs. A. C. E. and Co. in a year or two become perfectly a "Dombey and Son," and each partner figures away in the province where his seat was and still is, with his former grandeur.

This is not an exaggerated picture. There are many houses in the city that can be pointed to as illustrations of it. If the above picture be true, the two questions are answered in the affirmative—and I hope you will in any future observations you may make on this subject, denounce these arrangements as being, in nine cases out of ten, most disadvantageous, and fraudulent to the creditors. Δ

## COUNTY COURTS.

### SALARIES OF THE JUDGES AND OFFICERS.

*Order of Council, October 30, 1847.*

WHEREAS by an act, passed in the Sessions holden in the 9th & 10th years of her Majesty's

reign, intituled "An Act for the more easy recovery of Small Debts and Demands in England," it is, amongst other things, enacted, that it shall be lawful for her Majesty, with the advice of her privy council, to order, that the judges, clerks, bailiffs, and officers of the court, holden under the said act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by the said act.

And whereas by the said act it is also enacted, that any order in council made for the purposes of the said act shall be published in the London Gazette, and notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the London Gazette, one calendar month at least, before any such order shall be made.

And whereas her Majesty has been pleased this day to refer the consideration of the said act, and of the order which it may be proper to make for the purposes of the said act as before-mentioned, to a committee of the Lords of her Majesty's most honourable privy council, and to direct, that the same committee do report their opinion to her Majesty.

Notice is hereby given, that after the expiration of one calendar month from the date of the publication of this notice in the London Gazette, her Majesty, with the advice of her privy council, will take into consideration the propriety of making an order, under the provisions of the said act, for paying the judges, clerks, bailiffs, and officers of the said courts by salaries instead of fees, or in such other manner as may be deemed expedient.

W. L. BATHURST.

[This order was not published in the *London Gazette* until the 27th Nov. 1847, and will take effect at the expiration of a month.]

## CHEAP CONVEYANCING AND THE STAMP LAWS.

*To the Editor of the Legal Observer.*

SIR,—As much has been said of late respecting the adoption of a cheaper system of conveyancing, particularly as regards small purchases, I would beg to draw attention, through the medium of your valuable publication, to the great hardship of the present Stamp Laws, as applied to the smaller dealings with real property. A general revision and alteration of the Stamp Laws is loudly called for; but their operation is particularly unjust and burdensome when applied to small purchases. As an instance, a purchaser to the amount of 150*l.*, even if his deed of conveyance does not exceed one skin, has to pay a stamp duty of nearly 4*l.* (including the lease for a year stamp, which attaches in most cases). This amount added to the reasonable charges of the attorney, makes a serious sum for a small purchaser to pay.

The attorney generally gets the credit of

having made unreasonable charges, the party not considering that nearly two thirds of the amount has to be paid out of pocket for duty to government. Even amongst persons whom you would expect to be better informed, the general impression is that the attorney's charges are the great burden upon the small purchaser. It is time that the unjust tax of the lease for a year stamp, at least, was abolished, and if, instead of the present scale of duty, a reasonable per centage was charged for duty upon the purchase money, (without limit as to the amount of purchase-money,) it would greatly facilitate the dealings with real property. Under the present Stamp Laws, the smaller the purchase the greater in proportion is the tax to be paid, and by parties the least able to bear it.

The operation of the present Stamp Laws is equally oppressive and burdensome on small mortgages. It is very desirable that, in the case of a mortgage to a limited amount, the mortgagor should be relieved altogether from the expense of the reconveyance at present necessary, and if a simple endorsement on the deed of mortgage were made effectual for discharging the property from the mortgage and revesting the estate in the mortgagor or his heirs, it would greatly facilitate transactions of this kind. A person can now, by joining a building or investment society, relieve himself from this burden, and why should not all mortgagors to a limited amount enjoy this privilege without being compelled for that purpose to join one of these societies? I do not think that the revenue would in the end suffer by this, for parties frequently refuse to give mortgages principally on account of the additional expense they will be put to in future by the necessity of having a reconveyance, and a simple deposit of deeds is frequently substituted for a mortgage.

E. P.

York, 17th Nov., 1847.

## RESTRICTIONS ON THE ASSIGNMENT OF LEASEHOLDS.

*To the Editor of the Legal Observer.*

SIR,—Instances are frequently occurring of the great inconvenience, and I may say loss, arising from insertions in leases of a clause restricting lessees from alienating without the consent of lessors.

I could mention one case in which a landlord, or rather his agent, actually required what in effect amounted to a premium for a licence to assign a colliery lease to a most unexceptionable party, the consequence of which was, that the treaty for the sale went off, to the great injury of the lessee, and to the ultimate loss and disadvantage of the lessor, who now instead of having a flourishing colliery yielding a large revenue, has a colliery filled with water yielding nothing.

This, perhaps, is an extreme case, as it is to be hoped that landlords will not, as a general

rule, demand premiums for licences to assign. It is, I think, a practice against which the profession ought to set their faces.

In another instance which has recently come under my notice, though no blame attaches to any of the parties, the effect of the clause has been very inconvenient, and might have occasioned considerable loss.

The property in question was a country residence of a London merchant who died. His personal representative, wishing to get rid of the house, agreed to assign the lease, for a small premium, to an unobjectionable party. On applying for the licence it turned out that the lessor had also died, leaving the reversion to his two sons, *who were minors*, and who, therefore, were incapable of granting a licence. Fortunately the parties were able to make an arrangement to meet the difficulty, but if it had been otherwise the consequence would have been injurious, both to the landlord and tenant.

As a practical lesson from the above, I would suggest, that all clauses restraining assignments, &c. without consent, should be qualified so as not to render it necessary to have any consent if the landlord is abroad or incapable of acting.

J. E. W.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From Oct. 26, 1847, to Nov. 19, 1847, both inclusive, with dates when gazetted.*

Bromiley, Arthur, Manchester. Nov. 16.

Freston, William Antony, Stroud. Nov. 19.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Oct. 26, 1847, to Nov. 19, 1847, both inclusive, with dates when gazetted.*

Bainbrigge, William Arnold, and Daniel Dunnett, Uttoxeter, Attorneys and Solicitors. Oct. 29.

Bowden, John Saunders, and Frederick Leopold Treacher Bowden, 66, Aldermanbury, Solicitors. Nov. 2.

Cattarns, Richard, and George Fry, 62, Mark Lane, and Greenwich, Attorneys and Solicitors, Nov. 2.

Clark, William, and Charles Frederic Sparrow, Wolverhampton, Solicitors and Attorneys. Nov. 12.

Foster, Robert Carr, William Carr Foster, and Henry Seymour Westmacott, 28, John Street, Bedford Row, Attorneys and Solicitors. Oct. 26.

Grimaldi, Stacey, Henry Edward Stables, and John Southernden Burn, 1, Copthall Court, City, Attorneys and Solicitors, so far as regards the said Stacey Grimaldi. Nov. 12.

Ogden, John, and Benjamin Gartside, Manchester, Attorneys and Solicitors. Nov. 5.

White, Richard, John Goble Blake, Edward Tylec, John Fawkener, and Edward Thomson, 14, Essex Street, Strand. Nov. 5.

Wilkinson, Josiah, Alfred Cobbold, and George Lee Patteson, 7, Lincoln's-Inn-Fields, Attorneys and Solicitors, so far as regards the said Josiah Wilkinson. Nov. 2.

Wood, Charles, and Charles Hurd Wood, Manchester, Attorneys and Solicitors. Nov. 5.

#### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Lord Chancellor.

*Trulock v. Robey.* 18th Nov., 1847.

PLEADING.—BILL OF REVIEW.—DEMURREN.

*A bill of review will not lie in respect of a decree which granted the whole of the prayer in the original bill, although it may appear from the pleadings in such bill, that the plaintiff is entitled to further relief than was specifically prayed for. The error assigned must be apparent on the face of the decree.*

Mr. Miller (*absente Koe*) stated that this was an appeal from the Vice-Chancellor of England, who had allowed a demurrer on the 2nd of June last to the plaintiff's bill of review, under the following circumstances:—One Richard Hutchins mortgaged certain property in 1767 to an individual for the sum of 50*l.*, and subsequently to another individual for a further sum, which sums being afterwards paid by Robey the elder, the property became vested in him, subject to the equity of redemption, and he afterwards entered into possession of it, and received the rents and profits until his death. The mortgagor at his death left three daughters his co-heiresses at law, one of whom died with-

out issue, and another married Trulock the elder, by whom she had Trulock the younger, her heir-at-law, the father of the plaintiff, his sole heiress. The other daughter and co-heiress of the said mortgagor sold her interest in the equity of redemption after the death of her first mentioned sister to Robey the elder. The bill stated *inter alia* that the defendant Robey the younger, entered into possession of the premises upon the death of his father, Robey the elder, and had ever since continued to receive the rents and profits thereof. The bill further stated, that the whole, or nearly the whole, of the sums due on the said mortgages, and the interest thereof, had been or might have been satisfied out of the rents and profits, so far as concerned the plaintiff's share in the premises; and it prayed for an account of such rents and profits received by the said defendant, but did not pray for such account in respect of the rents and profits received by Robey the elder; and it further prayed that the plaintiff might be declared to be entitled to redeem her share upon paying what might be found due. In 1841, it was accordingly ordered that the usual reference for an account, &c., should be made to the Master, and that in default of plaintiff's redeeming her share by payment within a given

time of what should be found due to the said defendant, the said bill should be dismissed with costs. The Master accordingly certified a certain sum to be due, which not having been afterwards paid, the bill was dismissed on the defendant's application, and the decree of the Vice-Chancellor duly enrolled. The present bill prayed for a review of the said decree, upon the grounds that it was erroneous in not having directed an account to have been taken of the rents and profits received by Robey the elder, to which the defendant demurred for want of equity, and upon the ground that no error or matter in law appeared on the decree whereby it ought to be reversed or impeached, &c.

Mr. Miller now contended that the demurrer ought not to have been allowed. [Lord Chancellor. The decree may be erroneous or imperfect in point of form, and still there may not be grounds for a bill of review. What you have to prove is, that the plaintiff having obtained such a decree as his bill prayed, the court was in error in not giving him more than he asked, although he would have been entitled to it if he had prayed for it in his bill.] What the plaintiff sought was sufficiently obvious from the pleadings. All the facts were fully alleged in the bill, and the court ought to have decreed that to which he was entitled, and not only that for which he specifically prayed. The plaintiff was so clearly entitled to an account of the rents and profit received by Robey the elder, that the Master had thus reported, but exceptions to his report had been allowed by Lord Chancellor Lyndhurst, on the grounds that the Master was not authorized by the decree to take such account, and therefore could not enter into them. A case precisely analogous to the present, was that of *Smart v. Hunt*, in Reg. Lib. 1787, B. fol. 686, (cited in a note to *Orde v. Heming*, 1 Vern. 418.) where the decree was, that the Master should set a rent on the premises, and take the account accordingly. [Lord Chancellor. It is not every erroneous or imperfect decree which a plaintiff chooses to take, that will entitle him to a bill of review, but quite the reverse. The cases in which a bill of review is allowed are few and limited. The error must be apparent on the decree.] In *Perry v. Phelps*, 17 Ves. 178, Lord Eldon observes, "there is a great distinction between error in the decree and error apparent. The latter description does not apply to a merely erroneous judgment, and this is a point of essential importance; as, if I am to hear this cause upon the ground that the judgment is wrong, though there is no error apparent, the consequence is, that in every instance a bill of review may be filed, and the question whether the case is well decided, will be argued in that shape, not whether the decree is right or wrong on the face of it." But in that cause his lordship referred to a mistake in law to be collected from the pleadings and evidence, and as the facts are never stated in the decree, it is impossible to say where a bill of review can be filed in re-

spect of such error or mistake. This appears from the case of *Brend v. Brend*, 1 Vernon, 213, (and *Bonham v. Newcomb*, p. 214, is to the same effect,) where it is stated, that from the manner in which the registers drew up the decrees no bill of review could be brought, for they only recited the bill and answer, and then added, that upon the reading of the process and hearing, &c., it was decided so and so, and never mentioned what particular facts were allowed by the court to be sufficiently proved; which practice the then Lord Keeper strongly reprobated, and expressed his determination to alter. [Lord Chancellor. Luckily many of the cases in Vernon are not considered as of much authority. This is one of them; for no one ever heard of a registrar taking upon himself to decide what facts have or have not been established. This the court must do.] Another ground of the Vice-Chancellor's decision

that no account could be decreed in respect of *Robey the elder*, as his personal representatives were not before the court. They were not, however, necessary parties. *Venables v. Foyle*, Chan. Ca. p. 2; note to *Parker v. Parker*, reported in Freeman, p. 59; *Bradwell v. Catchpole*, note to *Waker v. Symonds*, 3 Swanst. 78; *Matthews v. Wallwyn*, 4 Ves. 118; and other cases. The Master thought that occupation rent should be charged against *Robey the younger*. The prayer for general relief would entitle the plaintiff to such as was consistent with the case made by the bill. *Dormer v. Fortescue*, 3 Atk. 124; *Hiern v. Mill*, 13 Ves. 114. The decree was also erroneous on the face of it, in not reserving the costs. It decreed that they should be paid, and therefore the court could not subsequently vary it. They should have been reserved until the account had been taken, for it might have turned out that by allowing annual rests, &c., that this mortgage had been satisfied by perception of the rents and profits. *Wilson v. Metcalfe*, 1 Russ. 530; *Norrish v. Marshall*, 5 Mad. 475.

The Lord Chancellor, without calling upon the other side, said, that in the case of *Perry v. Phelps*, *supra*, Lord Eldon had laid down the rule very clearly. The object of a bill of review, as distinguished from that of an appeal, was for the remedy of an error apparent on the face of the decree, and depended upon an error in the practice, as distinguished from the judgment of the court. In the present case the judgment of the court had been regulated by the plaintiff's prayer. What he there asked for he obtained by a decree in as many words. He thought it would entitle him to more, but this having been refused, he could not urge that there was any error on the face of the decree. If any error existed it was with himself for not having asked enough. If he had obtained less than he asked it might be an error of the court not to have granted it, but such could not be argued to have been the case, because the court did not give him more than he asked. His Lordship thought, therefore, that the Vice-Chancellor was quite right in allowing the demurrer, and that his decision must be affirmed;

and he further remarked, that he did not think the case had suffered by the absence of the leading counsel. All had been said that could be said, but the case itself was infirm.

Appeal dismissed.

### Rolls Court.

*Bellamy v. Bellamy.* Nov. 11, 1847.

DECREE.—PURCHASE MONEY.—PAYMENT INTO COURT.

*A purchaser allowed under the circumstances to pay his whole purchase money into court, on motion, notwithstanding a direction in the decree under which the estate was ordered to be sold, that the surplus only of the monies produced should be paid into court after discharging debts and legacies.*

In this case Mr. Toller moved on the part of the plaintiffs, that the purchaser of an estate directed by the decree to be sold, might be at liberty to pay the purchase money into court, notwithstanding a direction in the decree. It appeared that the decree ordered the trustees of Mr. Bellamy's will to sell the estate in question among other property, and after discharging his debts and legacies to pay the surplus into court. But this estate was subject to four legacies of 2,000*l.* a piece to the four nephews of the testator, in case they survived his widow, with remainder over in case of any dying previously. The widow was still alive. The purchaser objected that under these circumstances he could not obtain a discharge, and therefore made the present application.

Mr. Barstow consented on the part of the purchaser.

Lord Langdale said that he was willing to make the order, but the circumstances of the cause of the variation from the decree must appear. He would not require the parties to present a petition, but the order should be prefaced by a statement of the circumstances, and it should be supported by an affidavit verifying them.

### Vice-Chancellor of England.

*Webb v. Webb.* Nov. 16, 1847.

COSTS OF SEPARATE ANSWER OF A TRUSTEE.

*Where a bill was filed on behalf of an infant against trustees for maintenance, and one of the trustees being at variance with the other, employed a different solicitor and answered separately: Held, that the costs of so doing could not be allowed him.*

In this case Richard Webb and William Yates were trustees of certain property bequeathed for the benefit of the plaintiff in the suit, who was an infant. The suit was instituted for the purpose of having the money paid into court upon trust that the dividends might be paid for the maintenance of the infant during her minority, and the principal transferred when she attained 21. It appeared from the bill that differences had arisen between the trustees Richard Webb and William Yates;

and William Yates, by his answer, alleged that Richard Webb had paid the dividends at various times into the hands of R. W. Webb, the father of the plaintiff, who had appropriated them to his own use. Richard Webb would not join with his co-trustee, William Yates, in putting in an answer to the bill, but chose to employ another solicitor and put in a separate answer. A decree was made in the cause, and Mr. Willcock, for Richard Webb, asked for his costs.

Mr. Bethell and Mr. Speed objected to the allowance of two sets of costs, and submitted that Richard Webb ought not to be allowed his costs of putting in a separate answer and employing a separate solicitor.

The Vice-Chancellor said, he disapproved of the conduct of Richard Webb, the trustee, and should only allow one set of costs.

*Maitland v. Backhouse.* November 18, 1847.

GUARDIAN AND WARD.—PROMISSORY NOTE.—INJUNCTION.

*Where a promissory note had been drawn by A., endorsed by plaintiff, and given to defendants by the drawer in payment of money due; and it appeared that the defendants, at the time they received the note, knew that the relation of guardian and ward had previously existed between the parties, and that the drawer had been in difficulties. Held, that it was incumbent on the defendants, at the time they took the note, to have inquired of the plaintiff the circumstances under which it had been indorsed by her; and a motion to dissolve an injunction restraining an action at law on the note refused.*

In this case an injunction had been granted to restrain the defendants from proceeding in an action at law against the plaintiff, and cause was now shown against dissolving it. It appeared that the plaintiff, Miss Maitland, a young lady of large fortune, was placed under the care of a Mr. Maclean, as guardian. In Sept. 1844, she attained the age of 21 years; and shortly afterwards, through the influence and under the persuasion of Maclean, she became security for various sums of money for him, he giving her promissory notes for the amount. Amongst others, was the note the subject of the action, to restrain which the injunction had been granted; it was in the form following:—"London, March 9, 1846. Six months after date, I promise to pay E. J. S. Maitland, or order, the sum of 5,000*l.*, value received. (Signed,) Donald Maclean." This note was endorsed by plaintiff, and then given by Maclean to two of the defendants for money due from him to them, and by them paid over to their bankers, the defendants, Messrs. Backhouse & Co., in payment of money due to them on a running account, and they commenced an action against plaintiff for the amount.

Mr. Bethell and Mr. Bazulgette showed cause against dissolving, contending that the defendants well knew that the promissory note

had been obtained by Maclean by an undue influence; that by their answer they admitted that they knew Maclean to be in embarrassed circumstances at the time he obtained plaintiff's signature to the note; that they themselves had actually refused to discount his bills; and that, under these circumstances, the Court of Chancery ought to interfere to protect the plaintiff.

Mr. Rolt and Mr. Cairns, contra, urged that Messrs. Backhouse had received the note in the ordinary course of business; that all they knew about the parties was, that plaintiff was possessed of property, and had attained her majority; but as to any fiduciary connexion existing between her and Maclean, or any undue influence having been used by him in obtaining the note, it was not incumbent on them to inquire about; and that if any such obligation on their part existed, mercantile transactions would be greatly fettered, and parties before discounting a bill would have to make inquiries about the persons whose names appeared upon it, a thing totally incompatible with business.

The Vice-Chancellor said, it appeared by the defendant's answer, that it had come to their knowledge that the plaintiff had been the ward of Maclean, that she had lived under his protection, and had obtained her majority in September, 1844. It was also in their knowledge, that before 1846, Maclean was in difficulties; thus they knew from transactions which had taken place between him and themselves. It was one of the most valuable parts of the jurisdiction of a court of equity to prevent any unfair influence from being used over those who were placed under the control of others, and in his opinion, this was a case which justified such interference; knowing as they did the position in which the plaintiff and Maclean stood, the defendants, without making any inquiries of the plaintiff herself, who was the only person really interested in the transaction, took upon themselves to advance the sum of 5,000*l.* Under such circumstances, he thought there was a case of suspicion sufficiently strong to enable him to interfere, and he should therefore continue the injunction.

Vice-Chancellor Knight Bruce.

*Newenham v. Pemberton.* Nov. 17, 1847.

INFANT.—SETTLEMENT.—HUSBAND AND WIFE.

*Where a husband who had married an infant tenant in tail of real estate was in contempt in not obeying an order of the court, and the infant was so entitled subject to a jointure term of 200 years, the court on petition heard with the cause instituted by her for an account of the rents of her estate, holding her interest to be equitable, ordered a reference to the Master to appraise of a settlement during the joint lives of herself and husband, if the term should so long last.*

By the original and annexed bill in this case, and by the Master's report, it was found, that

by indenture of lease, and appointment, and release, dated in 1828, certain freehold estates were conveyed to C. Pemberton and H. Hawkins, their heirs and assigns. To the use of Henry Hawkins for life, with remainder to trustees to preserve contingent remainders, with divers remainders over which failed, with remainder as to part of the property to the use of Francis Wortham for life, with remainder to his sons in tail, with remainder to his daughters as tenants in common in tail, with remainder over in fee. A power was given to Henry Hawkins to jointure any wife by way of rent charge, with power of limiting the estate for 200 years for securing the same. Part of the property which was copyhold was then settled upon trusts similar to those uses of the freeholds. That by indenture, dated in 1829, Henry Hawkins, in pursuance of his power, limited the estate for 200 years if his then intended wife should so long live, to J. D. Barnaby, W. Hawkins, and E. Hawkins, and charged the estate with a rent-charge of 200*l.* with the usual power of distress and entry, and of sale or mortgage of the term if the jointure should be in arrear, and a proviso for cesser of the term on the death of the jointress, and full payment of her annuity. That the limitation in favour of the daughters of Francis Wortham, took effect, and that Frances-Louisa Wortham, since Frances-Louisa Newenham became tenant in tail general in possession, subject only to the jointure of 200*l.* to the widow of Henry Hawkins, and the term of 200 years for securing the same. That at the time of the death of her father in January 1843, the daughter was about 14 years of age, and at midsummer in last year she returned from school and resided with her mother, and at her mother's charge up to the 13th of October then following, when she was by false representations and fraudulent practices of William Burton Newenham, a man of needy circumstances, induced to go to Birmingham, where they lived together as man and wife, and the following day were married according to the law of Scotland, at Gretna Green, she being then between 14 and 15 years of age, and 10 months after a child was born. That after living together some months, the husband was apprehended and tried for and convicted of a misdemeanour in taking the daughter, being an unmarried girl under 16 years of age, out of the custody and against the mother's consent, and that for this offence he suffered two years' imprisonment. That at the time of the abduction, the husband was upwards of 30 years older than the wife. The bill was filed by the mother as next friend of the wife, against C. Pemberton and J. Hawkins, and against the husband, praying an account of the rents and profits, and that the court would direct that such proceedings should be taken as the court should think proper in reference to the abduction of the plaintiff and her alleged marriage, if any. During the progress of the suit, the husband was ordered to attend the court on a certain day, but

he failed to do so, and by an order of July 1844, he was declared in contempt, but he had sworn that he did not get the notice to attend till after the day appointed. He petitioned now that the cause come on upon further directions, that he might be declared not in contempt, and a petition also was presented by the wife, praying a reference to the Master to approve of a settlement.

Mr. Swanston and Mr. Prendergast for the plaintiff, argued that the court had full jurisdiction to make an order of reference for a settlement, firstly, on the ground that the husband was in contempt, and the court would deal with him on that contempt committed in the very matter before the court, so as to force him to make a proper provision for the wife, and secondly, by reason that the estate of the wife was equitable, for that the legal estate in the property was outstanding in *C. Pemberton and J. Hawkins* for the term of 200 years. The bill did not pray a settlement, but that was not necessary, for an infant may have a decree upon any matter relating to his case though not expressly prayed by his bill, as was held in *Stapilton v. Stapilton*, 1 Atk. 5, and that the court would deal with the real property of the wife in this matter was plain from Lord Cottenham's decision in *Sturgis v. Champneys*, 5 Myl. and Cr. 97.

Mr. Cole appeared for the trustees.

Mr. Russell and Mr. Malins for the husband, insisted that the two grounds taken by the counsel for the plaintiff failed, and the bill ought to be dismissed. In the first place, although the husband was technically in contempt so far as the order for declaring him so was concerned, yet no process of contempt had been taken out upon it, and, therefore, he was not fairly to be called in contempt; and secondly, the title to the property was a legal and not an equitable title. The term of 200 years did not and could not interfere with the legal limitation to the tenant in tail general the wife, and was only to be called into existence and exercised then, if ever the jointure to the widow of Henry Hawkins should be in arrear, and indeed, even then, it might not be asserted, for that lady had ample powers of distress and entry served to resume all her jointure out of the rents from the tenants. *Doe v. Thomas*, 2 Barn. & Cress. 289, expressly decided that a term for raising portions could not be set up as a defence to an ejectment brought by a tenant under lease executed by virtue of a power of leasing contained in the same settlement subsequent to the term, and in *Doe v. Finch*, 4 Barn. & Adol. 283, the court held that a term granted to A with limitation over to B for life, or in fee, gave the immediate estate of freehold to B; and that notwithstanding the existence of a term for raising portions previously limited, B, the tenant in tail, was not prevented from levying a fine. Then with respect to *Sturgis v. Champneys*, that was a case governing similar cases, but this was not similar, and in *Hanson v. Keating*, 4 Hare 9, Vice-Chancellor intimated strongly, that had that decision not existed he

should have probably decided the other way, but finding it to be in existence he followed it. The bill failing on both points ought to be dismissed. The fact of the existence of the proviso for cesser of the term was also urged, and it was insisted that the husband, on the marriage, obtained a legal estate for the life of his wife in the property, and on the birth of the child a legal estate for his own life as tenant by the curtesy, so that if the court did anything asked it would be taking from the man an estate he had acquired by purchase for value on his marriage. Nothing could be said in favour of the means by which that title was acquired, but it was a legal and not an equitable title, and the court had no jurisdiction to interfere with it.

Sir J. L. Knight Bruce, V. C. There is so much of moral justice and so much of fairness in my Lord Chancellor's decision in *Sturgis v. Champneys*, that it would, I suppose, be a matter of general regret, if it were decided by the House of Lords, not to be according to the law. Finding that decision, which I believe as I have said, to be one founded upon moral justice, and tending to general convenience, I gladly follow it. It is true, that in *Sturgis v. Champneys*, the person who claimed against the wife's equity was a plaintiff seeking the assistance of the court, but I do not collect that the learned judge, to whose decision I am referring, rests the case necessarily upon that, or considered that if she had filed the bill she could not have had the equity. He thus expresses himself: "It was argued, that it having been held in *Lady Elibank v. Montolieu*, that the wife may come into this court to assert her title to a settlement; the claim could no longer be just upon the ground of compelling the husband or his assignee seeking equity to do equity. In this case, the assignee is plaintiff, and it is not, therefore, necessary to go beyond the facts now before me. If that case be applicable to the present, it would only prove that Lady Champneys might herself have come into the court as plaintiff, to claim that which she now asks to have imposed as a condition of the decree sought by the husband's assignee. The existence of this higher equity could not deprive her of what she so asks." And my opinion is, that if it would be right to give this relief to the wife, being defendant, against the plaintiff seeking the interposition of the court, and resisting her equity, it is right, upon the cases, to the principal one of which the Lord Chancellor alluded in the passage from which I have just read, to give her relief upon a record thus situated. The only question remaining, if I am right so far, is, whether this is an equitable interest? and upon that I really confess myself unable to doubt. I do not say an equitable chattel interest, but I say an equitable interest, for although she or her husband is the owner of the immediate legal fee, yet there is an equitable interest which prevents, the assertion of the title for any purpose but enjoyment, except in a court of equity. Whilst therefore the term of 200 years lasts the title she has is equitable,



as I understand it. And it appears to me, therefore, that she is entitled to a settlement of the rents—if they are the rents which are in question—either during the joint lives, or until the determination of the 200 years. The question is, whether, if during the joint lives, the term of 200 years shall, (by force of the clause to which reference has been made,) determine, her settlement can endure beyond that. I will hear you upon that if you wish it. My impression is, that I ought to direct a settlement of, or out of the rents of the estate during the joint lives of the husband and wife, if they shall so long live. As soon as the term goes, her title is purely legal.

*Swanston* asked for leave to take the decree with liberty to apply.

Vice-Chancellor *Bruce*. I do not see any great harm, without prejudice to whether she may be entitled to a more extended settlement, which you have not argued. As to the contempt, I will continue the order of July, but you must be ordered not to issue any process of contempt without leave of the court. Take the decree in the language of *Sturgis v. Champneys*, leaving it to the Master, if he think fit, to give her the whole rents, so that it must be not merely "out of" the rents. The receiver and the maintenance must be continued without prejudice to the interests of the jointress in the term.

### Queen's Bench.

(Before the Four Judges.)

*Heinod v. Wilkin*. Michaelmas Term, 1847.

#### PLEADING.—SEVERAL COUNTS.

*A charter party was made between the plaintiff and defendant, but before the voyage was completed a subsequent agreement was made between the parties varying the terms of the original contract. The plaintiff obtained leave to have two counts in the declaration, but the defendant afterwards applied to a judge at chambers to strike out one of the counts as being in apparent violation of the new rules of pleading. The judge refused to make any order, but indorsed on the summons, "No order, I being satisfied that there is a distinct cause of complaint."*

*On motion to rescind the indorsement, the court declined interfering with the discretion exercised by the judge, but expressed an opinion that if the facts stated were established at the trial, the plaintiff would not incur any risk of losing his costs under the new rules of pleading.*

THIS was an action on a charter-party. The contract was, that the vessel should proceed to a certain port, take in a cargo, and return. After the outward voyage was completed, a subsequent agreement was made between the parties with respect to the voyage home, altering the terms of the original contract. Under these circumstances, Mr. Justice Wightman gave leave for the plaintiff to have two counts

in the declaration, one on the subsequent agreement and the other on the charter-party generally. A summons was afterwards taken out by the defendant before Mr. Baron Platt, at chambers, calling on the plaintiff to show cause why one of the counts in the declaration should not be struck out as being in apparent violation of the new rules of pleading. The learned Baron refused to make any order, but indorsed on the summons, "No order, I being satisfied that there is a distinct cause of complaint."

Mr. *Rew* moved to set aside the indorsement on the summons on the ground that the effect of that indorsement would be to deprive the plaintiff of his costs, unless at the trial he should be able to prove two distinct subject-matters of complaint. [Lord Denman, C. J. Is not the order of the learned judge at chambers final?] The cases of *Dewar v. Swabey*,<sup>a</sup> and *Temple v. Keily*,<sup>b</sup> go to show that an order like this made by a judge at chambers may be rescinded by the full court. The joining these two counts is not in apparent violation of the new rules of pleading. The plaintiff may not be able at the trial to prove two distinct subject-matters of complaint, but if he fails in proving the indorsement on the charter-party as alleged in the first count, he may still have the count on the charter-party to rely upon. *James v. Bourne*,<sup>c</sup> *Hemming v. Trenery*.

*Cur. ad. vult.*

Lord Denman, C. J. We are not disposed to interfere with the discretion exercised by Mr. Baron Platt at chambers, in making this indorsement on the summons. We do not think that the plaintiff incurs any risk of losing his costs under the new rules of pleading, if he fails to establish a separate cause of action on each count, provided he is able to establish before the judge who tries the case the fact which have been stated to us. Rule refused. s

### Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

*Ex parte William Gray*. November 25, 1847.

ATTORNEY.—REFUSAL TO RENEW CERTIFICATE WHEN CONVICTED 18 YEARS AGO OF A CONSPIRACY.

*An attorney was convicted 18 years ago of a conspiracy to concert a fiat in bankruptcy. It was sworn that the judge who tried the cause expressed doubts of the guilt of the applicant in his summing up, and that he was not guilty of any fraud in the transaction. He had since acted as clerk to various attorneys up to the present time. The court nevertheless refused to grant an order for the renewal of his certificate.*

*Prentice* moved for an order authorising the registrar to issue a stamped certificate to Mr. William Gray, authorising him to practise as an attorney. It appeared by the affidavits, that the applicant was duly admitted an attor-

<sup>a</sup> 11 Adol. & Ellis, 913. <sup>b</sup> 1 Man. & Gr. 904.  
<sup>c</sup> 4 Bing. N. C. 420. <sup>d</sup> 9 Adol. & Ellis, 926.



ney of this court in July, 1813, and that he regularly took out his certificate to practise up to the year 1839, when he ceased to do so by reason of his having been convicted on an indictment charging him with conspiring with other persons to concert a fiat in bankruptcy. The trial took place before the Lord Chief Justice Abbott, and who, it was sworn in the affidavit of the applicant, in summing up the case to the jury, expressed himself of opinion that the evidence against Gray was by no means conclusive, but admitted of great doubt with respect to his guilt or innocence of the charge. He was, however, convicted. A new trial was moved for in the Queen's Bench, but the rule was refused on the ground that the other defendants did not join in the application, and not on the merits. The applicant swore positively that he was not guilty of the offence with which he was charged, and that if there was any fraud connected with the fiat, he was not a party thereto, but merely acted as solicitor in the regular way of business, and that just before the trial the attorney for the prosecution offered to remove him out of the indictment if he would give evidence against the other parties, but this he could not do as he had no evidence to give. After the expiration of his sentence the applicant did not in any way, directly or indirectly, practise as an attorney on his own account, but acted as clerk to and assisted various attorneys of this court in their business, and had thereby supported his family up to the present time; he was, however, now anxious to resume practice on his own account, and to be allowed to take out an annual stamped certificate for that purpose.

It was now submitted, that under all the circumstances of the case, it was one in which the court would grant the application; here the applicant no doubt had been convicted of a conspiracy 18 years since; now no cases varied more in the measure of guilt which attached to them than convictions of conspiracy; in the present case it was of conspiracy to concert a fiat in bankruptcy, which, in the present day, would not be considered a crime at all; here the attorney too swore that he was not guilty of the crime imputed, and it also appeared that the Lord Chief Justice Abbott seemed to have considerable doubt of the guilt of the defendant. The present application must be looked at as if the party were showing cause against a case for striking off the rolls. Now it is clear that it is not for every case of a conspiracy that the court will do that. There is an anonymous case in 1st Dowling P. C. page 174, on which *Campbell* showed cause against a rule for striking an attorney off the roll, on the ground of his having been convicted of a conspiracy two years before, and *Parke, J.*, in discharging the rule, says, "there are no cases in which there is more variety than in cases of conspiracy; they vary from the highest degree of enormity to the lowest degree of culpability. There is no case which goes the length of deciding that the mere fact of having been convicted of a conspiracy is a sufficient ground for striking an attorney off the roll."

Under all the circumstances of the present case, therefore, it was submitted, that as the case was a very doubtful one as against the attorney, the court would think that he had been sufficiently punished for the share he had taken in the crime with which he was charged, and grant the present rule. In this case it was to be observed that ample time had been given for inquiry into the character of Mr. Gray, and his conduct for the last 18 years.

*Erle, J.* I feel it my duty to refuse this application, and I do so with less hesitation because, earlier in the term, a similar application was refused in the full court,\* where the facts presented to the court in favour of the attorney were stronger than those relied on in the present case. The jurisdiction of this court over an attorney as its officer, is exercised not only in holding out to the world that there is no reason to distrust the capacity of the persons who are admitted to practise in it, but also as a guarantee for their honesty as attorneys. The court then, in exercising its jurisdiction in inflicting penal consequences on its officers for any misconduct, should take care that no inducement is held out to them to act dishonestly, and to believe that crime may be committed by them with impunity. Now here there has been an attorney of this court, on a solemn inquiry before a judge and jury, convicted of a conspiracy, and, although it may be true that no crime varies more in its nature than the one of which the applicant has been convicted, yet still I have known cases of conspiracy to make a man bankrupt take place under circumstances of the most cruel and odious kind. I do not think it necessary to enter particularly into the facts of this case, for I am bound to think that the learned judge who tried the case must have known and considered the extent and enormity of the crime committed by the defendant; his opinion of that is of course measured by the amount of punishment awarded, and I find that the punishment awarded in this case went to the extent of eighteen months' imprisonment. I gather, then, from this sentence, that the case against the defendant was by no means so slight a one as he would lead the court to believe. It cannot, therefore, be expected that, after 18 years have passed since his conviction by the highest court of criminal jurisdiction in the kingdom, that he is to be allowed again to practise as an attorney, and that too upon his own unsupported affidavit. I feel bound, therefore, to refuse this rule, and I do so the more readily as a somewhat similar case has been most fully discussed by all the judges, where the facts in favour of the applicant were stronger than those in the present case.

Rule refused.

[Where the grounds of objection to the renewal of a certificate appear on the face of the applicant's affidavit, the Incorporated Law Society submit their suggestions through the Master. Such, we understand, was the course in this case.—*Ed.*]

\* *Ex parte Macey*, ante, page 65.

**Exchequer.**

*Green and others v. Lawrie and others.* Nov. 24, 1847.

**NOTICE OF AN ACT OF BANKRUPTCY.**

*Notice that a trader has filed a declaration of insolvency is notice of an act of bankruptcy at that moment, if a fiat afterwards issues within two months.*

THIS was a feigned issue between the plaintiffs, assignees of a bankrupt and execution creditors, to determine whether the latter had received notice of an act of bankruptcy before levying execution. The defendants were the representatives of the Union Bank of London. That bank having made advances to a trader, and not being paid in time took proceedings against him, which were admitted to be adverse, and obtained a judge's order. On the 1st July, 1846, he filed a declaration of insolvency in the office of the Lord Chancellor's secretary. On the 2nd July, a few moments before ten, A.M., a written notice of his having filed the declaration was served personally upon the manager of the bank, as notice of an act of bankruptcy, and at a few minutes before eleven, A.M., a similar notice was served on the attorney in the action, and on the sheriff. Judgment was signed soon after eleven, A.M.—the levy made at one, and the fiat issued in the course of that afternoon.

At the trial before the Lord Chief Baron, the verdict was entered for the defendants, leave being reserved for the plaintiffs to move to have it entered for them. A rule having been accordingly obtained in Easter Term,

Russell Gurney now showed cause. The 2 & 3 Vict. c. 29, protected *bond fide* executions, unless the creditor had notice of an act of bankruptcy before the levy. Where was there notice of such an act in this case? The 6 Geo. 4, c. 16, s. 6, provided, that if a trader filed a declaration of insolvency at the office of the Lord Chancellor's secretary, and such declaration was within eight days afterwards advertised in the London Gazette, such declaration should be an act of bankruptcy. Then came the 5 & 6 Vict. c. 122, s. 22, which dispensed with this form, and provided, that when a trader should file a declaration of insolvency in the office of the Lord Chancellor's secretary, he should be deemed thereby to have committed an act of bankruptcy, provided a fiat issued within two months. The 7 & 8 Vict. c. 96, s. 41, next

came, which provided, that the Chancellor might issue a fiat without an act of bankruptcy, upon the application of a creditor. It was clear, therefore, that until the fiat issued the filing of the declaration was not an act of bankruptcy, but merely a proceeding that ought or might not eventuate in an act of bankruptcy. If a fiat should not issue, it would not be an act of bankruptcy, and from this it followed, that till the issuing of the fiat it was not an act of bankruptcy.

Pollock, C. B. When lying in prison for 40 days was an act of bankruptcy, it dated back from the first of the 40 days, and all who dealt with the bankrupt were bound to take notice of it as such.

Gurney. In *Conway v. Nall*, (1 Com. Bench Rep. 643,) it had been expressly decided that such a notice as this was not sufficient to invalidate an execution, all the forms required by the 6 Geo. 4, c. 16, s. 6, not having been complied with. That case was decided two years after the passing of the 5 & 6 Vict. c. 122, which dispensed with those forms. He was bound to admit that in the course of that case no allusion whatever was made to this enactment.

Rolfe, B. The statute provides expressly that the party shall be deemed to have committed an act of bankruptcy at the time of filing the declaration, if a fiat issues within two months.

Martin, contra. This very point was decided in the Court of Common Pleas, on Friday last, in a case of *Follett*, (one of the official assignees of the London Bankruptcy Court,) v. *Hoppee*.

Follock, C. B. I had decided the case at *nisi prius* in favour of the defendants, on the authority of *Conway v. Nall*. It is clear, however that the 5 & 6 Vict. c. 122, leaves no doubt on the question.

Parke, B. It is clear in the case of *Conway v. Nall*, the judges never had their attention called to the 5 & 6 Vict. c. 122, which plainly enacts, that the filing of the declaration shall be deemed an act of bankruptcy if a fiat issues. The only question then is, whether an execution creditor having notice of that act of bankruptcy, is deprived of the benefit of the execution. I have no doubt on the question that he is.

The other Barons concurred.

Rule absolute to enter the verdict for the plaintiffs.

**ANALYTICAL DIGEST OF CASES.**

REPORTED IN ALL THE COURTS.

**Courts of Equity.**

**LAW OF WILLS.**

**ABSOLUTE INTEREST.**

Bequest of 2,000*l.* to A., and in the event of her death without children, to her heirs the nearest relations of her grand aunt A. Held,

that A. took an absolute interest. *Yearwood v. Yearwood*, 9 Beav. 276.

**ALIEN.**

Trust.—Testator devised freeholds and leaseholds to four persons intending them to hold the same in trust for an alien, and shortly afterwards informed three of them of his intent, and

those three, at his request, wrote letters to him acknowledging the intended trust. After his death a suit was instituted by two of the devisees against the other two, the alien, the testator's next of kin, and the *Attorney-General* as representing the Crown, to have the rights of the parties declared.

The court refused to make any declaration, except that the lands were not subject to any trust. *Burney v. Macdonald*, 15 Sim. 6.

#### ATTORNEY-GENERAL.

**Costs.**—In a suit to have the rights of the parties to the property in question declared, to which the *Attorney-General* was a defendant as representing the Crown, the court refused to give the *Attorney-General* his costs, though it gave all the other parties their costs as between solicitor and client. *Burney v. Macdonald*, 14 Sim. 6.

Case cited in the judgment: *Attorney-General v. Lord Ashburnham*, 1 Sim. & Stu. 394.

#### ANNUITY.

1. **Apportionment of arrears.**—Gift of an annuity of 300*l.* to the testator's three daughters and the survivors and survivor, with a gift over to the last survivor of the sum set apart to answer the annuity. After the death of one of the daughters, the fund set apart was lost by the misconduct of the trustee, and the annuity remained unpaid for the rest of the lives of the other two; but after their deaths a sum of money forming part of the residue, but of less amount than the original fund becoming available: *Held*, (reversing the original decision,) that as the last survivor had had no opportunity of receiving the capital during her life, the annuity was to be considered as continuing for her benefit after her sister's death until her own, and therefore, that she was entitled to an apportionment in respect of the arrears of such annuity during that interval, as well as in respect of the principal fund. *Innes v. Mitchell*, 2 Phill. 346; 1 Phill. 710.

2. **Leaseholds.**—Testator bequeathed two leasehold houses to trustees in trust, out of the rents to pay 50*l.* a year to his daughter-in-law so long as she should remain his son's widow; and to invest the surplus in stock, to be held in trust for his wife for life, remainder for his grand-daughters, and after his death, in case his daughter-in-law should be then married, or after her decease or second marriage, whenever the latter event might happen, to sell the houses and invest the proceeds in stock, to be held in trust for his wife for life, remainder for his grand-daughters. The daughter-in-law continued single, and the trustees paid her 50*l.* a year out of the rents, and disposed of the surplus in the manner directed, until the lease of the houses expired.

*Held*, after the death of the testator's widow, that the stock purchased with the surplus rents was not subject to the payment of the annuity, notwithstanding the lease had expired. *Darbo v. Rickards*, 14 Sim. 537.

#### APPOINTMENT.

1. **Power.**—If a fund is given in trust for all

and every the children of *A.*, in such parts or shares, and in such manner, and subject to such directions, contingencies, and restrictions as *A.* shall appoint, an appointment of the whole income of the fund to the children for their lives successively is invalid. *Lloyd v. Laver*, 14 Sim. 645.

2. **Power.—Attestation.**—A will, in order to be a good exercise of a power, was required to be signed and published by the donee in the presence of, and attested by, two or more credible witnesses. The donee made a will, which was signed by him, and was attested thus:—"We the undersigned attest to have seen the above testator sign the above will." *Held*, that that clause was in effect an attestation to the publication as well as the signature of the will, and consequently, that the power was well exercised. *Bartholomew v. Harris*, 15 Sim. 78.

#### ASSETS.

See *Specialty Debts*.

#### CHARITY.

1. **Mortmain.**—Testator bequeathed the residue of his personal estate to his executors, in trust for the establishment or institution of a charitable receptacle, if the same could be done, for 54 poor old men; but if no such institution could be conveniently established, he desired that the residue should be disposed of in charitable donations of 6*l.* each to persons of the same description.

*Held*, that the bequest was wholly void under the Statute of Mortmain. *Attorney-General v. Hodgson*, 15 Sim. 146.

2. **Episcopal Church of Scotland.**—Testator, who had been born in Scotland, and educated at Glasgow College, by his will, dated in 1677, and made while he was resident in England, gave the residue of his estate to trustees for the maintenance and education at the University of Oxford of scholars born and educated in Scotland, who should have spent a certain time as students at Glasgow College; and he declared it to be his will that every such scholar should, upon his admission at Oxford, execute a bond conditioned for payment of 500*l.* to the college, if he should not enter into holy orders, and if he should return into Scotland, there to be preferred or advanced as his capacity should deserve, but in no case to come back into England, nor to go into any other place but only into Scotland for his preferment. The testator died in 1679. Glasgow College was Presbyterian while the testator was a student there, but Episcopalian at the date of his will and of his death. In 1693 a decree was made by Lord Somers in relation to this charity, whereby it was declared that Baliol College should receive the testator's exhibitioners according to the condition of his will, and directions were given as to the number of students and their stipend, &c. In 1759 this decree was adopted by Lord Keeper Henley, with certain variations as to the increasing of the numbers of exhibitioners and the stipends of each. Under these decrees, students had been admitted for many years at Baliol College from

Glasgow College, without regard to their destination for holy orders. Upon an information, filed 1845, at the relation of certain members of the Episcopal Church of Scotland, praying a scheme for the regulation of the charity, the court directed a reference to the Master to inquire whether, consistently with the law of Scotland, the scheme according to which the charity was administered could be modified so as to make it more effectually conducive to the supply of the present Episcopal Church of Scotland, with fit and competent clergymen, who, being born in Scotland, and educated at Glasgow and Oxford, should exercise the clerical functions in Scotland. The court also declared, that in administering the charity in the meantime, Glasgow College ought to have regarded, so far as conveniently might be in the present state of the Episcopal Church in Scotland, to the circumstances that the testator ought to be considered as having been, when he made his will, a member of the Established Church of England or the Established Church of Scotland, and therefore an Episcopalian Protestant, and having by the expression "holy orders" meant holy orders by Episcopal ordination. *Attorney-General v. Glasgow College*, 2 Coll. 665.

3. *Legacy for the public benefit.*—A bequest to the Queen's Chancellor of the Exchequer for the time being to be by him appropriated to the benefit and advantage of Great Britain: *Held*, to be valid so far as related to the pure personality, but void in respect of the personality savouring of realty. *Nightingale v. Goulburn*, 5 Hare, 484.

Cases cited in the judgment: *West v. Knight*, 1 Cas. in Chan. 134; *Jones v. Williams*, Amb. 651; *Attorney-General v. College of William and Mary*, 1 Ves. jun. 243; *Powerscourt v. Powerscourt*, 1 Moll. 616; *Attorney-General v. Heelis*, 2 Sim. & Stu. 67; *Attorney-General Brown*, 1 Swanst. 265; *Attorney-General v. Mayor of Dublin*, 1 Bligh. N. S. 334; *Attorney-General v. Mayor, &c. of Carlisle*, 2 Sim. 437; *Attorney-General v. Earl of Lonsdale*, 1 Sim. 105; *Mitford v. Reynolds*, 1 Phill. 185, 706; *Kendall v. Grainger*, 5 Beav. 300.

#### CONVERSION INTO MONEY.

Testatrix, after expressing her intention to dispose of all her real and personal estate as thereafter mentioned, gave certain legacies, and appointed A. and B. her executors, and gave to them and her heirs all lawful powers and authority to conduct and manage her freehold estates, so as that the same might at their discretion be sold and converted into money, and the net money to form part of her personal estate, and for those and every other purpose connected with her property, whether real or personal, she invested them, and the survivor of them, and his heirs, executors, and administrators, with her full authority; and she directed that any undisposed of surplus of monies should be paid as she should by any future will or writing direct.

*Held*, that the real estate was converted out and out into money, and subjected in common with the personal estate to the payment of the

testatrix's debts and legacies. *Flint v. Warren*, 14 Sim. 554.

See *Legacy*, 2.

#### DEVISE OF SUCCESSIVE INTERESTS.

*Renewal of Leases.—Fines.*—On a devise of successive interests in leases for lives or years, where the testator directs that the leases are from time to time to be renewed without adding more, the fines and expense of renewal are to be borne by the tenant for life and remainderman, or parties successively entitled in proportion to their actual enjoyment of the estate, and not in proportion to an extent of enjoyment to be determined speculatively, or by a calculation of probabilities.

There is no difference in the rule as to apportionment of fines for renewal between the devisees of successive interests in the estate, whether the leases are for lives or for years.

If the testator provides a specific fund for the renewals, or directs that the renewals shall be raised or borne by the parties in a certain manner, or in certain proportions, such direction supersedes the general rule; but if trustees, having power to direct the manner in which the fines shall be raised, do not exercise the power, the court will pursue the general rule which would be adopted in the absence of any direction as to the manner of providing for the fines.

Whether there is any difference in the rule of appointment in cases where the parties take successive interests under wills, and in cases where such interest is taken under settlements by deed—*quære*?

Whether trustees, having power to raise the fines out of the rents and profits, or by mortgage or otherwise, as they should think fit, might so act as to throw the burden on the parties in proportions different from those in which it would be distributed by the general rule of the court—*quære*? *Jones v. Jones*, 5 Hare, 440.

Cases cited in the judgment: *White v. White*, 9 Ves. 554; *Allen v. Backhouse*, 2 V. & B. 65; *Greenwood v. Evans*, 4 Beav. 44; *Playters v. Abbott*, 2 Myl. & K. 97; *Earl of Shaftesbury v. Duke of Marlborough*, 2 Myl. & K. 111.

#### DEVISE SUBJECT TO MORTGAGE.

A testator having an estate subject to a mortgage of 4,460*l.*, created by himself, devised it to A. *Be* in fee, "he paying the mortgage thereon," and he devised his residuary, real, and personal estates to trustees for the payment of his debts, and he gave to the mortgagee, through the medium of his executors, 2,000*l.*, to exonerate the estate: *Held*, that although if the devise had been simply "of the estate," or "of the estate subject to the mortgage thereon," the mortgage would have been payable out of the testator's general estate, yet that the words, "he paying the mortgage thereon," imposed a duty on the devisee, and amounted to a direction or condition that he should pay the mortgage, or take the estate subject to the burden upon it, so far as the same exceeded the 2,000*l.* An estate was mortgaged to A. who submortgaged it to

*B.* *A* devised the estate to *C.*, and bequeathed to *B.* the sub-mortgagee, through his executors, 1,000*l.*, to clear in part the estate. *Held*, that the devisee of the estate was entitled to the 1,000*l.* *Lockhart v. Hardy*, 9 Beav. 379.

#### DEVISEE AND NEXT OF KIN.

*Marguer.*—*Incumbrances.*—*A.*, on her father's death, became seized of real estates as his heir, and entitled under his marriage settlement to a sum which the trustees of the settlement had lent him on mortgage of the estates.

The testatrix, by a deed executed shortly before her will, charged the estates, and the sum secured on them, with an annuity, and otherwise showed that she intended the mortgage to be kept on foot for the purpose at least of securing the annuity. By her will, she devised the estates after the payment of her own debts, and after her father's affairs should have been settled, to *B.*, and died intestate as to her residuary personal estate. *Held*, that as against her next of kin the incumbrance created on the estate by her father must be considered to have merged in it. *Swabey v. Swabey*, 15 Sim. 106.

See *Legacy*, 2; *Specialty Debts*.

#### ELECTION.

See *Legacy*, 2.

#### EXECUTOR DE SON TORT.

*Principal and Agent.*—*Pleading.*—The widow of a testator employed *A.* to collect some of the debts due to the testator's estate, which *A.* accordingly collected and paid over to the widow, believing that she was the administratrix. The widow subsequently died without having obtained letters of administration. *Held*, that *A.*, having received monies which he knew to be part of the estate of the testator, and not having accounted for such monies to the legal personal representative of the testator, was liable to be sued as executor *de son tort*. That the liability was not avoided by the suggestion that *A.* acted as the agent of the widow, inasmuch as the acts of the widow and *A.*, in reference to the said testator's estate, were the acts of wrong doers, and the law does not recognize the relation of principal and agent as existing amongst wrong doers. That *A.* was liable as executor *de son tort* to account to a party interested in the testator's estate, in a suit for that purpose, without any charge of collusion between such executor *de son tort* and the legal personal representative. *Sharland v. Mildon*; *Sharland v. Loosemore*, 5 Hare, 469.

Cases cited in the judgment: *Padget v. Priest*, 2 T. R. 97; *Stephens v. Elwall*, 4 Man. & Sel. 259; *Snowden v. Davis*, 1 Taunt. 559.

#### EXECUTOR.

See *Personal Representative*, 2; *Residue*.

#### EXTRINSIC EVIDENCE.

*Intention of Testatrix.*—In 1843 a testatrix made several bequests to the amount of £1,000 of the stock 3 per cent. consols, then standing in her name in the books of the Bank of England. The testatrix died in the same year, and had not, at the date of the will, or

at her death, any stock whatever standing in the bank books. It appeared, however, from extrinsic evidence, that in 1840 she had a sum of £1,000 bank annuities standing in her name, which she sold out and lent to *A. B.*, he paying her down to her death a sum equal to the dividends. It was held that extrinsic evidence was admissible to prove how the mistake in description arose, and that the legatees were entitled to a sum equal to the value of £1,000 consols at her death.

The decision in *Sellwood v. Mildmay* (3 Ves. 306) explained, and the effect of the decree therein stated.

The case of *Sellwood v. Mildmay* is not overruled by the cases of *Miller v. Travers*, (8 Bing. 244) and *Doe dem. Hiscocks v. Hiscocks* (5 M. & W. 363). *Linggren v. Linggren*, 9 Beav. 358.

Case cited in the judgment: *Selwood v. Mildmay*, 3 Ves. 306.

#### "FAMILY."

Testator gave all his property, both real and personal, to his wife for life, "and after the death of my wife, my nephew is to be considered as heir to all my property; but I direct that whatever portion of my property may hereafter be possessed by him shall be secured by my executors for the benefit of his family." *Held*, taking the whole of the will together, that the testator by the word "family" meant the children, but not the wife of his nephew; and that the property ought to be settled on the nephew for life, and on his children after his death. *White v. Briggs*, 15 Sim. 17.

#### FURNITURE, &c.

*Wife—Time of death.*—Testator bequeathed to his wife as follows:—All my interest in my house at Lavender-hill, the furniture, books, pictures, wines, &c. &c. After the date of his will the testator removed from Lavender-hill to Spencer-lodge, taking with him furniture, books, pictures, wines, and plate. He afterwards purchased more of these articles, and died at Spencer-lodge.

*Held*, that his wife was entitled to the furniture, books, pictures, wines, and plate, which he had at the time of his death. *Norris v. Norris*, 2 Coll. 719.

#### GUARDIAN.

1. *Allowance for maintenance.*—The court exercises a control in respect of any allowance ordered to be paid to testamentary guardian, and on the marriage of a female testamentary guardian to whom an allowance for maintenance has been made, ordered inquiries to be made, into the altered state of circumstances. *Jones v. Powell*, 9 Beav. 345.

2. Testator directed the trustees of his will to procure a suitable house for the residence of his children, (who were infants,) and to a proper person for the purpose of taking the management and care of the house and of his children during their minorities; and he re- his late wife's sister, if she should be alive at his decease, to take such management and care on herself.

**Held**, that the testator had appointed his wife's sister the guardian of his children. *Miller v. Harris*, 14 Sim. 540.  
See *Precoatory Trust*, 1.

#### INTEREST ON LEGACIES.

1. Interest on legacies is given for delay of payment, and consequently until the day of payment arrives no interest is in general demandable.

When a legacy is given by a parent to his child, interest is allowed thereon by way of maintenance, though the day of payment has not arrived. But the rule does not apply where the testator has by will made provision for the child's maintenance. *Donovan v. Needham*, 9 Beav. 164.

Cases cited in the judgment: *Hearle v. Greenbank*, 3 Atk. 716; *Wynch v. Wynch*, 1 Cox, 453.

2. Legacy to A. on condition that she gave 3000*l.* to purchase an annuity for B. In consequence of a litigation between A. and the residuary legatees, A. did not for several years obtain possession of the legacy, which did not in the meanwhile make interest. Payment to B., who elected to take the 3,000*l.* in lieu of the legacy, was consequently postponed. **Held**, that interest on the 3,000*l.* was payable by A. to B. from the end of a year after the testator's death. *The Marquess of Hertford v. Lord Lowther*, 9 Beav. 266.

#### ISSUE.

**Children.**—The word "issue" may be restricted so as to mean children, and conversely the word "children" may from the context be enlarged so as to be construed "issue;" each case depends on the peculiar expressions used and the structures of the sentences. If the case be doubtful, the court prefers that construction which will most benefit the testator's family, on the supposition that this must most nearly correspond with his intentions. *Farrant v. Nichols*, 9 Beav. 327.

#### JOINT TENANTS.

**Remainder.**—Bequest to testator's daughter for life, and on her death to the testator's son and his children. The son had no child at his father's death, but had children living at the death of the daughter. **Held**, that his children were neither joint-tenants with him nor entitled in remainder after his death, but that the fund belonged to him absolutely. *Scott v. Scott*, 15 Sim. 47.

#### LEASEHOLDS.

See *Annuity*, 2; *Devise*; *Residue*, 2.

#### LEGACIES.

1. **Charge on real estate.**—A testator gave legacies, and charged his executors, to whom he devised real and personal estate, with the payment thereof. **Held**, that the legacies were charged on the real estate. *Cross v. Kennington*, 9 Beav. 150.

2. **Conversion—Devise—Election.**—By a marriage settlement, real estates were conveyed to trustees in trust to sell and to hold the proceeds in trust for the husband and wife for their lives successively, remainder in trust for

their children, remainder in trust for the survivor of the husband and wife absolutely. There was no child of the marriage. The husband survived his wife, and after her death consulted his solicitors upon his rights under the settlement, and they having advised him that he was entitled to the whole beneficial interest in the estates, he got possession of the settlement and of the title-deeds, and remained in the possession of them, and also of the estates, until his death. **Held**, that thereby he declared his election to take the estates as land. *Davies v. Ashford*, 15 Sim. 42.

3. Testator bequeathed all his personal estate to A. subject to the payment of his debts and funeral and testamentary expenses, and after charging his real estates with the payment of certain legacies and annuities, he devised them to B. **Held**, that he had not exempted his personal estate from the payment of the legacies and annuities. *Davies v. Ashford*, 15 Sim. 42.

4. **Absolute bequest.**—Bequest of 8,000*l.* to testatrix's daughter, a married lady, towards purchasing a country residence. **Held** to be an absolute bequest. *Knox v. Lord Hotham*, 15 Sim. 82.

5. **Pecuniary.—Party to suit.**—It is perfectly settled as a general rule, that a pecuniary legatee is not a necessary or a proper party to a bill for an account of the personal estate. It is the duty of the executors to protect the estate against improper demands.

But where a question directly occurred between the residuary legatee and a pecuniary legatee, which it was found impossible to determine in a general administration suit, and a suit was afterwards instituted by the residuary legatee against the pecuniary legatee, and the executor to determine it, a demurrer by the pecuniary legatee on the ground that he had improperly been made a party, was under the special circumstances overruled. *The Marquess of Hertford v. the Count and Countess de Zichy*, 9 Beav. 11.

See *Interest on Legacies*; *Specialty Debts*.

#### LIMITATIONS.

1. **Survivorship.**—In construing limitations to a parent for life, and afterwards to his children, with a provision relating to survivorship annexed, whether occurring in wills or settlements, the rule for determining both the class who are to take and the contingency to which the survivorship refers, is to lean to that construction which will include as many objects of the gift as possible consistently with the declared purpose of the author of the instrument. *Bowerie v. Bowerie*, 2 Phill. 349.

Case cited in the judgment, *Howgrave v. Cartier*, 3 V. & B. 79.

2. Testator devised and bequeathed all his real estate, and all the residue of his personality, to trustees upon trust to pay his wife an annuity for her life, and subject to such annuity upon trust as to the whole of his said real and personal estate for his son F., his heirs, executors, administrators, or assigns, as and when he should attain the age of 25; and in case his

said son should die after the age of 21, but before 25, then as his said son should by will or deed appoint, but in case his said son should not make any such appointment, or should die before 25 without leaving issue, then upon trust for the testator's own heirs, executors, or administrators.

*Held*, that the last limitation embraced those persons only who were entitled to the testator's property at the time of his death, and that it was no objection to this construction that *F.* himself happened to be one of those persons. *Wilkinson v. Garrett*, 2 Coll. 643.

See *Ultimate Limitation*.

#### MONEY.

*Residue*.—The word "money" by itself in a will means money strictly, and nothing else; but when used in connexion with other words it may have a much more extended signification.

A testator bequeathed to his wife the interest of his money and the use of his goods for life; at her death he gave certain legacies, and the remainder of his property to his brothers and sisters. *Held*, that the widow was entitled to the residue for life. *Glendening v. Glendening*, 9 Beav. 324.

And see *Conversion into Money*.

#### MORTGAGEE.

See *Devise subject to Mortgage*.

#### MORTMAIN.

See *Charity*.

#### NEXT OF KIN.

A testator gave his residuary estate to his daughter for life, with remainder to her children, and in default to his next of kin. *Held*, that the class of next of kin was to be ascertained at the testator's death. *Lasbury v. Newport*, 9 Beav. 376.

See *Personal Representative*, 2; *Ultimate Limitation*.

#### "OR" CONSTRUED "AND."

*Vested interest*.—Testator gave in trust to his brother *E.* the remainder of his property, of whatsoever kind, to assist him to bring up, educate, and provide for the children of his late brother, *J.*, whom he named. "When my youngest nephew attains his age of 21 years, it is my will that all my property be equally divided amongst my nephews or their lawful issue, share and share alike; the division, however, is not to take place, although my youngest nephew have attained the age of 21 years, until the decease of my wife, my sister *J.*, and my brother *E.*:" *Held*, that the interests of the nephews were not contingent on their living until the youngest of them should attain 21, but vested on the testator's death, and that the word *or* was to be construed conjunctively, and consequently that the nephews took estates-tail in their shares of the testator's real property, and absolute interests in their shares of his personal property. *Parkin v. Knight*, 15 Sim. 83.

#### PERSONAL REPRESENTATIVES.

1. Testator bequeathed 800*l.* in trust for his daughter Sarah for life, and after her death he

bequeathed it to such of his other children as should be living at her death, equally, if more than one, and if but one child should be then living, then to such only child; and if all his children should be then dead, (which event happened,) then to his personal representative or representatives, and he directed the trustees to transfer the stock accordingly. Sarah and the testator's other children were his next of kin at his death.

*Held*, that their personal representatives, and not his next of kin at Sarah's death, were entitled under the ultimate bequest. *Nicholson v. Wilson*, 14 Sim. 549.

2. *Executor*.—*Next of kin*.—Testator, after devising certain freehold estates in trust for *A.*, in strict settlement with remainder to *B.*, in strict settlement with remainder to his own right heirs, gave leasehold and copyhold property (of the nature of personality) upon trusts similar thereto, yet so that the same should not vest absolutely in any child for a tenant for life unless such child should attain 21, and so that, in default of any person becoming entitled thereto under this my will, the same shall be in trust for my personal and not my real representative. And the testator gave the residue of his personal estate to his wife, and appointed her sole executrix of his will. Upon the death of all the tenants for life without issue, a question arose as to the devolution of the leasehold and copyhold estates between the next of kin of the testator at the time of his death, his next of kin at the time of the death of the surviving tenant for life, and the representative of the widow.

*Held*, that the representative of the widow was entitled to the exclusion of both classes of next of kin.

The words "personal representative," or the words "legal personal representative," must ordinarily and *prima facie* be taken to mean "executors or administrators." *Smith v. Barneby*, 2 Coll. 728.

#### PORTIONS.

Testator devised his estates in *B.* to the same uses as the estates comprised in his eldest son's marriage settlement were thereby limited to; and he devised his estates in *M.* to trustees in trust, by sale or mortgage, to raise portions of 5,000*l.* each for his youngest children, and from and after the performance of that trust, and subject thereto in the first instance, and subject to the payment of such of his debts as his personal estate should be insufficient to satisfy, he devised those estates to his eldest son in fee, and appointed him his executor. The testator died indebted by specialty as well as simple contract, and his personal estate being insufficient to pay his debts, his eldest son, with the concurrence of the trustees of the estates in *M.*, sold those estates, and exhausted the proceeds in making good the deficiency of the personal estate to pay the testator's debts.

*Held*, that his youngest children were entitled, in respect of their portions, to a charge on the estate in *B.*, equal in amount to the proceeds of the estates in *M.*, which had been applied to pay the specialty debts. *Legh v. Legh*, 15 Sim. 135.



## POWER.

## See Appointment.

## PRECATORY TRUST.

1. *Words of recommendation.—Guardian.*—Words of recommendation or desire in a will will not raise a trust if such construction would conflict with other provisions of more definite and positive import, in the same instrument, but the court will give such effect to them as may not be inconsistent with those provisions.

A father having, by his will, appointed a guardian to his children with a recommendation that, in the event of their mother's death during their minorities, they should be placed under the care of two female relations: *Held*, on a contest between those ladies and the testamentary guardian, in reference to the management of the children after the mother's death, that the court was bound to give effect to the recommendation, but not further than might be consistent with preserving to the testamentary guardian the general superintendence and control over the children and their fortunes, which, by virtue of his office, it was his right and duty to exercise. *Knott v. Coltee*, 2 Phill. 192.

Cases cited in the judgment: *Finden v. Stephens*, 2 Phill. 142; *Shaw v. Lawless*, 5 C. & F. 129.

2. *Testatrix willed*, that after payment of her legacies, the whole of her property should be given to her sister Mary, to be hers independent of any husband, and earnestly recommended her to take such measures as she might deem best for making it sure that whatever she might inherit might go at her decease to her children.

*Held*, that the children at their mother's death were entitled to the property as joint tenants absolutely. *Cholmondeley v. Cholmondeley*, 14 Sim. 590.

3. *Testator gave to his wife all her jewels, trinkets, &c.*, which, he added, might be finally appropriated as she pleased, with the sum of 4,000*l.* in money, but which sum he recommended her to divide amongst certain persons in certain shares. *Held*, by the Vice-Chancellor, that a trust was created in favour of those persons, to take effect after the wife's death. The Lord Chancellor, however, held the contrary on appeal. *White v. Briggs*, 15 Sim. 33.

Case cited in the judgment: *Meredith v. Heneage*, 1 Sim. 542.

## REMOTENESS.

*Reversionary interest, settlement of.*—Bequest to A. for life, with remainder to her children who should attain 25, with a clause for maintenance during minority, and for accumulation of surplus income: *Held*, that the gift to the children was not void for remoteness.

Upon the marriage of a ward the intended husband proposed to settle the whole of her fortune. The Master, in ascertaining her fortune, omitted to state a reversionary interest. Her property was settled, omitting the reversionary interest, and the husband covenanted

to settle any property to which the wife or he in her right "should at any time during the marriage" become entitled. *Held*, that the reversionary interest ought to be settled. *The Marquess of Bute v. Harman*, 9 Beav. 320.

## REPRESENTATIVE OF NEPHEW AND NIECE.

Testator bequeathed 1,500*l.* stock to trustees in trust for his daughter for life, and after her decease for her children, but if she should have no children, then he directed his executor to stand possessed of the fund in trust, to pay or transfer the same quality unto and between his three nephews, A. B., and C., and his niece, and the survivors and survivor of them share and share alike. The nephews and niece survived the testator and died in the lifetime of the daughter, who died without ever having had a child.

*Held*, that the representatives of the nephews and niece were entitled in equal shares. *Wagstaff v. Crosby*, 2 Coll. 746.

## RESIDUE.

1. *Executor.*—Testator bequeathed his residuary estate to A., the executor and trustee of his will, with a gift over, in case of the death of A., so that he might not be enabled to perform the duties thereby required of him. A. proved the will, but died before he had fully performed the trusts of it. *Held*, that by merely proving the will he entitled himself to the residue absolutely. *Hollingsworth v. Grasett*, 15 Sim. 52.

2. *Executor.—Leaseholds.*—Upon the construction of a will, *held*, that executors were entitled, as against the Crown claiming in default of next of kin of testatrix, to the surplus proceeds of leaseholds which were bequeathed to be sold for payment of the testatrix's debts and legacies.

Executors having legacies under the will held not to be precluded from taking property undisposed of by the will to their own use, the legacies being unequal in amount.

Testatrix bequeathed certain leaseholds to trustees, upon trust for sale, and to apply the proceeds in or towards payment of her debts, funeral and testamentary expences, and legacies, as far as the same would go; and as to all the monies and personal estate not therein before by her disposed of, and not consisting of lands, tenements, and hereditaments, or the produce thereof, she bequeathed the same for payment of her debts, funeral expenses, and legacies, and she had not devised any other than leasehold lands to be sold: *Held*, that the surplus produce of the leaseholds did not fall into the residue, but was undisposed of. *Russell v. Clowes*, 2 Coll. 648.

Cases cited in the judgment: *Dawson v. Clark*, 15 Ves. 409; 18 Ves. 247; *Southhouse v. Bate*, 2 Ves. & B. 396.

See *Money: Tenant for Life*.

## RESIDUARY LEGATEE.

*Dividends.*—A testator gave 200*l.* a year to S. for her life, and after her decease he gave 6,666*l.* 13*s.* 4*d.* consols to be divided equally among such children as should attain 21. S.



survived the testator, and died leaving six children, five of whom had attained 21 in her lifetime.

*Held*, that the testator's residuary legatee was excluded from claiming any portion of the dividends of the fund. *Stone v. Harrison*, 2 Coll. 715.

Cases cited in the judgment: *Taylor v. Johnson*, 2 P. W. 504; *Elison v. Airey*, 1 Ves., sen. 111; *Shepherd v. Ingram*, Amb. 448; *Mills v. Norris*, 5 Ves. 335; *Whitbread v. Lord St. John*, 10 Ves. 152; *Gilbert v. Boorman*, 11 Ves. 238; *Davidson v. Dallas*, 14 Ves. 576; *Deffis v. Goldschmidt*, 19 Ves. 566.

#### SPECIALTY DEBTS.

*Assets.—Devisee and legatee.*—Specific legacies and devised real estates must contribute rateably to the payment of specialty debts. *Gervis v. Gervis*, 14 Sim. 654; *Cornewall v. Cornewall*, 12 Sim. 128, overruled.

Cases cited in the judgment: *Long v. Short*, 1 P. W. 403; *Silk v. Pryme*, 1 Dick. 384; 1 Bro. C. C. 138, n.

#### "SURVIVING."

A married woman having power to dispose of 1,500*l.* by her will, gave the interest of it to her husband for his life, and directed that after his decease the principal should be divided equally between the five daughters of her sister B., and if any of them should die during her husband's lifetime, leaving issue, that the respective issue of such deceased's daughters should have equally divided among them their mother's share, but in case any of them should die during her husband's lifetime without lawful issue, that the 1,500*l.* should be divided share and share alike among the surviving said daughters.

*Held*, that the word "surviving" had reference to the testatrix's husband, and therefore as all the daughters died in his lifetime, and only one of them left issue, that four-fifths of the 1,500*l.* were undisposed of. *Watson v. England*, 15 Sim. 1.

#### SURVIVORSHIP.

1. Bequest to one for life, with remainder over to two others, with a clause of survivorship, "if one or the other of the latter should die." *Held*, that the survivorship had reference to the death of the tenant for life, and not to that of the testator; and one of the remainder-men having survived the testator, but pre-deceased the tenant for life, the survivor was held entitled to his share by survivorship. *Whitton v. Field*, 9 Beav. 368.

2. Testator bequeathed 50,000*l.* to trustees, in trust for his wife for life, and after her death he gave one-fifth of that sum to the same trustees in trust to invest it and pay the interest to his daughter for her life, and upon her demise to appropriate the interest for the use of any her child or children, until they reached the age of 21 years, and then the principal to be paid to the survivor or survivors of the children of his said daughter, share and share alike. The testator also gave 2,000*l.* to the same trustees, in trust to invest it and to pay the interest to his

daughter for her life, and after her decease to appropriate the interest for the use of any her child or children, until they reached the age of 21 years, when the 2,000*l.* was to be paid to the survivor or survivors of the said children of his said daughter. The daughter had two children who attained 21, but only one of them survived her.

*Held*, that that child became entitled on her death to the whole of the trust funds in which she had a life interest. *Turing v. Turing*, 15 Sim. 139.

See *Limitations*, 1.

#### TENANT FOR LIFE.

*Long Annuities. — Residue.*—Testator bequeathed all his personal estate to trustees, and directed them to convert it into money and to pay the interest to certain persons for their lives, then to invest the principal in the purchase of lands, it being also understood that where his money or personal estate might be lying on undoubted real or personal security, such securities might be only renewed in the names of the trustees. The testator's personal estate consisted in part of Long Annuities. *Held*, that the *cestuis que trust* for life of the personality were not entitled to receive the Long Annuities, but that they must be converted into Consols. *Preston v. Melville*, 15 Sim. 35.

#### TENANTS IN COMMON.

Testator devised his copyhold and leasehold estates in trust for his son for life, and after his decease in trust to assign and surrender the same unto and among the person or persons who, at the son's death, would be entitled to his personal estate in case he should die intestate. The son died, leaving a widow and four children.

*Held*, that they took the estates in equal fifth parts as tenants in common. *Richardson v. Richardson*. 14 Sim. 526.

#### TRUST.

See *Alien*; *Precutory Trust*.

#### TRUSTEES, NEW.

Testator devised his real estates to A., B., C., D., and their heirs, on certain trusts, which required the legal estate to be vested in them, and gave a power of sale to them or the survivor or survivors of them, or the heirs of the survivor, and declared that their or his receipts or receipt should be a good discharge to the purchaser, and if any of them should die or decline to act, that it should be lawful and he thereby willed and directed that the survivors of them should immediately, or within two months afterwards, by any deed nominate some fit person to be a trustee in his place. D. died; and A. and B. by one deed, and C. by another, (both of which were executed more than two lunar months, but less than two calendar months after D.'s death,) nominated a new trustee, but did not convey the legal estate to him. A., B., C., and the new trustee agreed to sell the estates to M. who objected to complete his purchase, first because the appointment of the new trustee had not been made within two

lunar months. 2ndly, because it had not been made by one single deed, and lastly, because the power of sale was suspended during the vacancy in the trust.

The court overruled the objections, but held that the new trustees had not been duly appointed, because no conveyance had been executed to him, notwithstanding which, that A., B., and C. could make a good title, and give an effectual discharge for the purchase money.

The court held also, that the new trustee, though not duly appointed, might join with A., B., and C. in a suit for a specific performance, *Warburton v. Sandys*, 14 Sim. 622.

#### TRUSTEES, SCOTCH

**Jurisdiction.**—A Scotchman, by a testamentary instrument in the Scotch form, bequeathed all his personal estate to trustees, in trust to pay legacies and annuities, and the income of the surplus to A. for A.'s life, and on A.'s death to invest the capital in the purchase of lands in Scotland. The trustees named in the will having disclaimed, the Court of Session appointed new trustees, who, as well as A. and several of the legatees and annuitants, were resident in Scotland. A. administered to the testator's estate in England, and filed a bill in Chancery against the trustees for the usual accounts of the testator's estate, possessed by them, and to have the residue ascertained and secured. The trustees filed a cross bill for an account of the testator's estate in England possessed by A., and to have the residue ascertained and paid over to them upon the trusts of the will. The court refused to relinquish its jurisdiction over the fund in A.'s hands, and directed it to be paid into court, and to be invested in consols, and the dividends to be paid to A. for life. *Preston v. Melville*, 15 Sim. 35.

#### ULTIMATE LIMITATION.

**Next of kin.**—Upon an ultimate limitation to testator's next of kin: Held, that the next of kin at the testator's death, and not those at the time when such ultimate limitation took

effect, were entitled. Where after specific limitations a testator gave his property to his next of kin, much weight is not to be attached to that which is supposed to be the testator's intention in favour of or against particular persons as his next of kin; for infinite variations may take place in that class between his will and his death. It is probable that a testator in such cases means to provide for particular persons, and then adds, that if they fail, then the law may take its course. *Seifferth v. Badham*, 9 Beav. 370.

Cases cited in the judgment: *Briden v. Hewlett*, 2 Myl. & K. 90; *Bulter v. Bushnell*, 3 Myl. & K. 232; *Holloway v. Holloway*, 5 Ves. 399; *Urquhart v. Urquhart*, 13 Sim. 627.

#### UNITARIANS, REQUEST TO.

A bequest for the assistance of Unitarian congregations, held to be valid, and the trust directed to be carried into execution. *Shrewsbury v. Hornby*, 5 Hare, 406.

#### VESTED REQUEST.

**Gift over.**—A testator gave his real and personal estate, after paying four annuities, to one for life, and after his death he directed his personal and the produce of his real estate to be divided amongst the children of A. living at the testator's death, when the youngest attained 21, if the annuitants should be then dead; but if not, then his trustees were either to invest it, and pay and apply the residue of the income to the maintenance, &c. of the children, according to their discretion, or accumulate; such accumulations to be paid after the death of the surviving annuitants, with the original shares. There was a gift over in the event of the death of any child who should become entitled to a distributive share before his share became "payable." One of the children predeceased an annuitant. Held, nevertheless, that the bequest was vested, and that the gift over did not take effect. *Butterworth v. Harvey*, 9 Beav. 130.

See "or" construed "and."

### BUSINESS OF THE COURTS.

#### CHANCERY SETTINGS.

AT LINCOLN'S INN.

Lord Chancellor.

Sittings after Michaelmas Term, 1847.

|           |        |  |
|-----------|--------|--|
| Wednesday | Dec. 1 | { The 1st Seal—Appeal Motions and Appeals.         |
| Thursday  | 2      | Appeals.   |
| Friday    | 3      | { (Petition-day.) Unopposed Petitions and Appeals. |
| Saturday  | 4      | {  |
| Monday    | 5      | Appeals.   |
| Tuesday   | 6      | {  |
| Wednesday | 8      | { The 2nd Seal—Appeal Motions and Appeals.         |
| Thursday  | 9      | Appeals.   |
| Friday    | 10     | { (Petition-day) unopposed Petitions and Appeals.  |

|           |    |  |
|-----------|----|--|
| Saturday  | 11 | { Appeals.   |
| Monday    | 13 |  |
| Tuesday   | 14 |  |
| Wednesday | 15 | { The 3rd Seal—Appeal Motions and Appeals.                       |
| Thursday  | 16 | Appeals.   |
| Friday    | 17 | { (Petition-day,) unopposed Petitions, and Appeals.              |
| Saturday  | 18 | { Appeals.   |
| Monday    | 20 |  |
| Tuesday   | 21 |  |
| Wednesday | 22 | { The 4th Seal—Appeal Motions and Appeals.                       |
| Thursday  | 23 | { (General Petition-day.) Lunatic Causes and Bankrupt Petitions. |

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

**Master of the Rolls.**

AT THE ROLLS.

Wednesday . Dec. 1 Motions.

AT THE JUDICIAL COMMITTEE.

Thursday . . . 2

Friday . . . 3

AT THE ROLLS.

Saturday . . . 4 { Pleas, Demurrers, Causes,  
Further Directions and  
Exceptions.

AT THE JUDICIAL COMMITTEE.

Monday . . . 6

Tuesday . . . 7

AT THE ROLLS.

Wednesday . . . 8 Motions.

AT THE JUDICIAL COMMITTEE.

Thursday . . . 9

Friday . . . 10

Saturday . . . 11

Monday . . . 13

Tuesday . . . 14

AT THE ROLLS.

Wednesday . . . 15 Motions.

AT THE JUDICIAL COMMITTEE.

Thursday . . . 16

Friday . . . 17

AT THE ROLLS.

Saturday . . . 18 { Pleas, Demurrers, Causes,  
Monday . . . 20 { Further Directions, and  
Tuesday . . . 21 { Exceptions.

Wednesday . . . 22 Motions.

Thursday . . . 23 { Petitions in the General  
Paper.

Consent Causes, Consent Petitions and Short  
Causes, on Saturday, the 4th and Saturday the 18th  
December, at the sitting of the court.

**Vice-Chancellor of England.**

Wednesday Dec. 1 The 1st Seal—Motions.

Thursday . . . 2 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
Drs.

Friday . . . 3 { (Petition-day,) Petitions,  
(unopposed first,) Short  
Causes, and Causes.

Saturday . . . 4 { Pleas, Demurrers, Excep-  
Monday . . . 6 { tions, Causes, and Fur-  
Tuesday . . . 7 { ther Directions.

Wednesday . . . 8 The 2nd Seal—Motions.

Thursday . . . 9 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Friday . . . 10 { (Petition-day,) Petitions,  
(unopposed first,) Short  
Causes, and Causes.

Saturday . . . 11 { Pleas, Demurrers, Excep-  
Monday . . . 13 { tions, Causes, and Fur-  
Tuesday . . . 14 { ther Directions.

Wednesday . . . 15 The 3rd Seal—Motions.

Thursday . . . 16 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Friday . . . 17 { (Petition-day) Petitions,  
(unopposed first,) Short  
Causes and Causes.

Saturday . . . 18 { Pleas, Demurrers, Excep-  
Monday . . . 20 { tions, Causes, and Fur-  
Tuesday . . . 21 { ther Directions.

Wednesday . . . 22 The 4th Seal—Motions.

Thursday . . . 23 { (General Petition-day) Short  
Causes, and Petitions.

**Vice-Chancellor Knight Bruce.**Wednesday Dec. 1 { The 1st Seal—Motions and  
Causes

Thursday . . . 2 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Friday . . . 3 { (Petition-day) Petitions and  
Ditto.

Saturday . . . 4 Short Causes and Causes.

Monday . . . 6 Bankrupt Petitions.

Tuesday . . . 7 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Wednesday . . . 8 The 2nd Seal—Motions.

Thursday . . . 9 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Friday . . . 10 { (Petition-day) Petitions and  
Causes.

Saturday . . . 11 Short Causes and Causes.

Monday . . . 13 Bankrupt Petitions.

Tuesday . . . 14 { Pleas, Demurrers, Excep-  
tions, Causes, and Further  
Directions.

Wednesday . . . 15 The 3rd Seal—Motions.

Thursday . . . 16 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Friday . . . 17 { (Petition-day) Petitions and  
Ditto.

Saturday . . . 18 Short Causes, and Causes.

Monday . . . 20 Bankrupt Petitions.

Tuesday . . . 21 { Pleas, Demurrers, Excep-  
tions, Causes, and Fur-  
ther Directions.

Wednesday . . . 22 The 4th Seal—Motions.

Thursday . . . 23 { (Petition-day,) Petitions,  
Short Causes and Bank-  
rupt Petitions.

**Vice-Chancellor Stirling.**Wednesday Dec. 1 { The 1st Seal—Motions and  
Causes.

Thursday . . . 2 { Pleas, Demurrers, Excep-  
Friday . . . 3 { tions, Causes, and Fur-  
ther Directions.

Saturday . . . 4 { Short Causes, Petitions,  
(unopposed first,) and  
Causes.

Monday . . . 6 { Pleas, Demurrers, Excep-  
Tuesday . . . 7 { tions, Causes, and Fur-  
ther Directions.

Wednesday . . . 8 { The 2nd Seal—Motions and  
Causes.

Thursday . . . 9 { Pleas, Demurrers, Excep-  
Friday . . . 10 { tions, Causes, and Fur-  
ther Directions.

|                    |   |
|--------------------|---|
| Saturday . . . 11  | { Short Causes, Petitions, (unopposed first,) and Causes.                 |
| Monday . . . 13    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions.           |
| Tuesday . . . 14   | { The 3rd Seal—Motions and Causes.  |
| Wednesday . . . 15 | { Pleas, Demurrers, Exceptions, Causes, and Further Directions.           |
| Thursday . . . 16  | { Short Causes, Petitions, (unopposed first,) and Causes.                 |
| Friday . . . 17    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions.           |
| Saturday . . . 18  | { Short Causes, Petitions, (unopposed first,) and Causes.                 |
| Monday . . . 20    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions.           |
| Tuesday . . . 21   | { The 4th Seal—Motions and Causes.  |
| Wednesday . . . 22 | { (Petition - day) Petitions, (unopposed first.) Short Causes and Causes. |
| Thursday . . . 23  | {   |

Rand v. M'Mahon, fur. dirs.  
*S. O.* Hickson v. Mainwaring, 2 causes.  
 Carter v. Barnard.  
 Walsh v. Trevanion, 3 causes.  
 Jarvis v. Wardale.  
 Sewell v. Murray, otherwise Clarke, 4 causes.  
 Smith v. East India Company.  
 Edge v. Duke.  
 Hodge v. Churchward.  
 Hitchcock v. Jaques, fur. dirs.  
 Ditto v. Burt, cause.  
 Cork v. Spain.  
 Smith v. Plummer  
 Ditto v. Smith.  
 Hopkinson v. Metaxa, fur. dirs. and costs.  
 Fanshawe v. Walter.  
 Clark v. Wyburn.  
 Wilcocks v. Butcher, exons.  
 Swift v. Grazebrook, exons. and fur. dirs.  
 Stiles v. Guy, exons. 2 sets, and fur. dirs.  
 Chambers v. Siggers.  
 Mills v. Smith.  
 Ly. Foley v. Hill  
 Lawrence v. Vaughan, fur. dirs. and costs.  
 Milford v. Reynolds, ditto.  
 Barnard v. Cutts.  
 Hart v. Groves.  
 Ford v. Walker  
 Leaf v. Patch.  
 Forbes v. Herring  
 Whitehead v. Parker.  
 Knott v. Prier.  
 Knott v. Cottee.  
 Moyle v. Borlase.  
 Low v. Graves.  
 Bromley v. Loton.  
 Bownass v. Abbott.  
 Hammett v. Turner, fur. dirs. and costs.  
 Ditto v. Ditto, suppl. bill.  
 Rowland v. Morgan.  
 Edwards v. Joynson.  
 Ditto v. Jackson.  
 Lewis v. Davids.  
 Morgan v. Davies.  
 Quisted v. Mitchell.  
 Lasbrooke v. Smith  
 Browne v. Ditto.  
 Gilbert v. Hodgkiss  
 Ditto v. Miller  
 Short, M'Adam v. Smith.  
 Lewis v. Smith.  
 Robinson v. Robinson.  
 Seymour v. Hamilton.  
 Sowerby v. Gutteridge.  
 Payne v. Wrench  
 Milburn v. Woodcock } fur. dirs. and costs.  
 Ditto v. Baker  
 Hobhouse v. Bland.  
 Payer v. Watson } fur. dirs. and costs.  
 Williams v. Ditto }  
 Blackman v. Light.  
 Rackham v. Siddall.  
 Maddison v. Chappell, 2 causes.  
 Chown v. Sharpe, fur. dirs. and costs.  
 Jones v. Foulkes, ditto.  
 Bennett v. Wooddall.  
 Short, Agnew v. Fielder.  
 Earl of Balcarras v. Johnson, exons.  
 23rd Dec. Moseley v. Baker.  
 Short, Pargeter v. Pargeter, 2 causes.  
 Short, Ames v. Burdon  
 Bridges v. Hinxman.  
 Short, Poole v. Bott.

CHANCERY CAUSE LISTS.

After Michaelmas Term, 1847.

AT LINCOLN'S INN.

Lord Chancellor.

APPEALS.

|                           |                          |
|---------------------------|--------------------------|
| <i>S. O. G.</i> Sharp     | Taylor, appeal.          |
| <i>S. O.</i> Lancashire   | Lancashire, do.          |
| <i>S. O.</i> { Hodgkinson | Hodgkinson } appeal.     |
| Ditto                     | Jackson }                |
| Alfrey                    | Alfrey, 3 causes appeal. |
| { Wilson                  | Wilson }                 |
| <i>S. O.</i> { Ditto      | Ditto } appeal.          |
| Ditto                     | Foster }                 |
| { Nightingale             | Goulbarn }               |
| { Whittington             | Nightingale }            |
| { Williams                | Edwards }                |
| { Soden                   | Ditto }                  |
| { Westby                  | Westby }                 |
| { Ditto                   | Ditto }                  |
| { Ditto                   | Ditto . do.              |
| <i>S. O. G.</i> { Sharp   | Taylor }                 |
| Ditto                     | Ditto }                  |
| Cridland                  | Lord Mawbey do.          |
| Fraser                    | Jones do.                |
| { Cunningham              | Murray }                 |
| { Ditto                   | Hay }                    |
| { Ditto                   | Murray }                 |
| { Lawrence                | Ditto }                  |
| { Maxwell                 | Kibblethwaite appeal.    |
| { Ditto                   | do.                      |
| Boyd                      | Boyd do.                 |
| Watts                     | Hyde, cause by order     |

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS. AND FURTHER DIRECTIONS.

Harris v. Brunton, plea.  
*S. O. G.*, Myers v. Macdonald, 2 causes.  
 Wastell v. Leslie } fur. dirs. and exons.  
 Bird v. Ford } cause by order.  
 Attorney-General v. Grainger, 2 causes, pt. hd.  
 Hiles v. Moore, 3 causes.  
 Steward v. Forbes.

## Vice-Chancellor Staight Bruce.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

- S. O. Schofield v. Calhuac.  
 S. O. { Parker v. Constable.  
       { Ditto v. Sturges.  
       Shaw v. Sykes.  
       East. T., Bull v. Bonfield.  
       Nott v. Nott.  
       { Glover v. East.  
       { Ditto v. Ditto.  
       { Butter v. Vernon } fur. dirs., costs, and  
       { Harward v. Butter } petitions.  
       Scott v. Davis.  
 6th { Attorney-Gen. v. Gardner }  
 Dec. { Ditto v. Ditto }  
       Rocke v. Cooke  
       Leyson v. Prees.  
       Thomas v. Thomas.  
       Pearson v. Goulden  
       Ditto v. Beck.  
       Ditto v. Hulme.  
       Ditto v. Oldham.  
       Dobson v. Hamilton.  
 10th Dec., Whatford v. Moore.  
       Mocatta v. Varicus.  
 6th Dec., Williams v. Peel, 2 causes.  
 6th Dec., Burt v. Braddon.  
 6th Dec., Fleming v. Carlyle.  
 6th Dec., Knight v. Cawthorn  
 6th Dec., Rowe v. Hole.  
 13th Dec., Du Val v. Borrodaile.  
 6th Dec., Bycroft v. Horton.  
 6th Dec., Sampson v. Hawkins.  
 8th Dec., Weald v. Dixon.  
 10th Dec., Stopford v. Keily.  
 10th { Vincent v. Hart }  
 Dec. { Ditto v. Nicholson }  
       16th Dec., Wren v. Bradley.  
       16th Dec., Lazarus v. Colbeck.  
       17th Dec., Davies v. Thorns.  
       Goodman v. Goodman, exons.  
       20th Dec., Batson v. Foot.  
       24th Dec., Emanuel v. Emanuel.  
 24th { Clarke v. Clarke }  
 Dec. { Ditto v. Fitzroy }  
       7th Jan., Wells v. Bourdillion,  
       Short, Hodges v. Eyre.  
       Parker v. Peet, fur. dirs. and costs.  
       Short, Culledge v. Bavin.  
       Moxhay v. Inderwick, exons.  
       Goodman v. Goodman, exons. 3 sets.  
       Brookman v. Whitehouse.  
       Short, Hughes v. Brigstocke.  
       Hillhouse v. Hillhouse.  
       Holmes v. Fisher, fur. dirg. and costs.

## Vice-Chancellor Stigram.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

- Hil. T., Attorney-General v. Ward.  
 To fix { Moor v. Vardon, }  
       a day { Ditto v. Luchlan, }  
       { Harvey v. Towell, } fur. dirs. and  
       { Ditto v. Gurney, } costs.  
       Ditto v. Towell, suppl. bill.  
       S. O., Parsons v. Muntz, pt. hd.  
       Hil. T., Clementi v. Fielding.  
       S. O., East v. Hoare.  
       Att.-General v. Johnson.  
       { Robertson v. Southgate }  
       { Harmer v. Ditto, }  
       Holland v. Mellersh.  
       Ling v. Harrison.  
       Angle v. Wright.

Papendick v. Jones, 2 causes.

Nichols v. Mackay.

Rock v. Callen.

1st Dec., Fitch v. Weber, exons. pt. hd.

1st { Fitch v. Weber }  
Dec., { Ditto v. Christian } exons. pt. hd.

Fisher v. Fisher, 2 causes.

Chinnoek v. Broom.

1st Dec., Thatcher v. Lambert, fur. dirs. &amp; costs.

1st Dec., Rodgers v. Nowill, ditto.

Gaskell v. Holmes, ditto.

Short, Brown v. Vernon.

18th Dec., Manser v. Back.

Ingersoll v. Kendall.

White v. Pearce.

Edwards v. Hodges, fur. dirs. and costs.

{ Westwood v. Westwood } ditto.  
{ Ditto v. Callum }

{ Elliott v. Lyne } ditto.

{ Ditto v. Symons, } ditto.

Browell v. Reed, ditto.

## COMMON LAW SITTINGS.

## Exchequer of Pleas.

After Michaelmas Term, 1847.

## IN MIDDLESEX.

|                      |                              |
|----------------------|------------------------------|
| Friday . . . Nov. 26 | Common Juries.               |
| Saturday . . . 27    | { Customs and Common Juries. |
| Monday . . . 29      | { Excise and Common Juries.  |
| Tuesday . . . 30     | { Juries.                    |
| Wednesday Dec. 1     | { Common Juries.             |
| Thursday . . . 2     | { Common Juries.             |
| Friday . . . 3       | { Common Juries.             |
| Saturday . . . 4     | { Special Juries.            |
| Monday . . . 6       | { Special Juries.            |
| Tuesday . . . 7      | { Special Juries.            |
| Wednesday . . . 8    | { Special Juries.            |
| Thursday . . . 9     | { Special Juries.            |

## IN LONDON.

|                      |                                   |
|----------------------|-----------------------------------|
| Friday . . . Dec. 10 | { Adjournment Day, Common Juries. |
| Saturday . . . 11    | { Common Juries.                  |
| Monday . . . 13      | { Common Juries.                  |
| Tuesday . . . 14     | { Common Juries.                  |
| Wednesday . . . 15   | { Common Juries.                  |
| Thursday . . . 16    | { Common Juries.                  |
| Friday . . . 17      | { Special Juries.                 |
| Saturday . . . 18    | { Special Juries.                 |
| Monday . . . 20      | { Special Juries.                 |
| Tuesday . . . 21     | { Special Juries.                 |
| Wednesday . . . 22   | { Special Juries.                 |
| Thursday . . . 23    | { Special Juries.                 |

The Court will Sit at 10 o'clock.

## Common Pleas.

This Court will, on Monday the 6th day of December next, and three following days, hold Sittings, and will proceed in disposing of the business now pending in the *Paper of New Trials*, commencing with the *New Trials in Middlesex and London*, and will also proceed to give judgment in certain of the matters standing over for the consideration of the Court.

[This arrangement was mentioned last week, p. 79. See as to the Queen's Bench, p. 104, and Exchequer, p. 76, *ante*.]

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 11, 1847.

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———“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## TAXES ON THE ADMINISTRATION OF JUSTICE.

### FEES IN COURTS OF LAW AND EQUITY.

THE first result of the labour of the committee of last Session, appointed by the House of Commons to inquire into the fees taken in the courts of law and equity, has just been published. The report itself is nothing. The fact that the parliament was about to break up when the taking of evidence terminated, sufficiently accounts for its defectiveness. But the materials for a report are there, and no one can exaggerate their importance. They make out a full justification of the strong opinion we have for years entertained against the taking of any fees from suitors for official business transacted in the courts.<sup>a</sup> It would be difficult, indeed, to find any justification for the exaction of official fees in courts of justice. The State claims the right to decide all disputes between its subjects. For the sake of the public peace it will not allow *A.* to take the goods of *Z.* to satisfy a debt which *Z.* owes him. *A.* must come to a court of justice, and the officers of the court must perform this task;—the private man is not to be entrusted with the exercise of an authority so likely in his hands to give rise to family feuds and local seditions. The State, therefore, claims this as its own exclusive and incontestible right. Nay more, it punishes the subject who in any way infringes on its prerogative. The subject must become a suitor, if he desires to enforce a right, or to obtain compensation for

a wrong. Why should he be taxed for doing that which, for its own purposes, the State compels him to do. The claim of the State to institute courts, and to compel all litigants to enter their precincts, is absolute,—it is a claim made by the State in the assertion of its corporate superiority over any one of the individuals who compose it. To deny the authority of the State Courts is sedition: to resist their decrees rebellion. The State insists that it shall be so.

We do not mean to deny that the State has a good reason for insisting on its paramount authority in this manner. Without the existence of such an authority, men would be in a constant state of confusion and turbulence. Government exists for two purposes,—to maintain regularity and safety both of person and property among its subjects at home, and to protect both their persons and property abroad. By tacit convention, every man in a civilised State gives up his right to private warfare in his own country and abroad, because, in each instance, the State to which he belongs undertakes to do all that justice requires for his sake. A government that did not attempt duly to discharge this undertaking would forfeit all lawful claim to the obedience of its subjects, and society, in the country where such a case occurred, would be dissolved, and its elements must be reconstructed. By what right is it that the State requires a man to pay it for discharging this its first and most imperative duty? So far as the protection of the subject when abroad is concerned, it makes no such claim upon his purse,—why should it do so in the case of his protection at home? If his ship was captured by a pirate in some distant sea, the government would

<sup>a</sup> *Ante*, vol. 26, p. 117, *et passim*.  
VOL. xxxv. No. 1,031.

not only not charge him the pay and pensions of officers and crew, and the wear and tear of a State vessel, which happened to be on that distant sea and recaptured his ship, but would actually go to the heavy expense of sending out such a vessel to effect the recapture, or at least to punish the pirates who had robbed him. Why should the State do this without charge to the merchant, and yet charge with heavy expenses the same merchant who, to get back his property from a private wrong-doer at home, asks the assistance of a court of justice? What conceivable difference is there in principle between the two cases, that in the one, the complaint of the individual should put the State to a great expense without his being individually taxed with one farthing of it, while in the other, though the State incurs no additional charge from his individual act, his complaint should be made to entail on him heavy official expenses, such as may make him pause before he determines to seek for justice, and almost ruin him should he resolve on doing so.

The defence of the present practice of demanding official fees from the individual suitor, cannot, in fact, be put upon the ground of reason or justice. No distinction exists in principle between the two cases we have described. In each the private individual is entitled, as of right, in virtue of his general contributions to the support of the government, and of the obedience which he renders to its authority, to obtain, free of cost, its interposition for his protection. And in rendering that protection, the State gains for itself dignity and power,—it maintains its own supremacy, adds to the property and prosperity of the country, and consequently to its own wealth and power, and secures the obedience of the subject by appearing to give him due value for yielding it. The system which now exists is only tolerated because it is old, not because it is either reasonable or just. Its origin was corrupt and tyrannical; its continuance is unwarrantable. In ancient times, when chieftains claimed the right to administer justice among their tenants, it was soon found that the establishment of officers added to the dignity, strength, and safety of their chief, and offices were created to enable him at once to provide for hungry favourites and to secure interested supporters. There is good reason to believe that fees of office first arose from gratuities, given by rogues who desired to do wrong with impunity, or by trembling suppliants, who, except through the favour of a great man's minion, had no

hope of justice.<sup>b</sup> These fees have been multiplied in more modern times as the means of providing for hangers-on of the great, and many offices exist, the needfulness or the usefulness of which not the most astutely ingenious man can pretend to discover. Indeed, in some cases, the acts required to be done in a court of justice, in order that fees may be levied in respect of them, are in themselves impediments in the way of a speedy, simple, and effective administration of the law. We could give numerous proofs of this. These acts afford no check against fraud or injustice, and sometimes create so much perplexity, that the interests of justice suffer, and serious wrong is perpetrated. Let us see what an experienced practitioner thinks of them. Mr. E. W. Field, an eminent solicitor, and a gentleman in no way severely opposed to fees or large official incomes,<sup>c</sup> is asked, (Q. 442.)—"Did not that system of taking out warrants [from the Master's office] originate with the parties who used to take the fees?" Mr. Field answers:—

"The whole system, not of warrants merely, but of the entire Chancery practice, originated upon a plan which divided the fees for the emolument of the officers in such a way as would be most likely to make the officers do the work. *The absurd cumbrousness of the practice, and its needless processes were attributable to the origin you allude to.*" No one acquainted with the practice will deny the truth of this remark. The scandalous, because needless, expense of bills of revivor and supplement when any one of numerous plaintiffs or defendants happens to die, is attributable to this cause, and so are many other things, both at law and in equity, which strike the suitor with terror and the practitioner with regretful shame. It will be our task to go through a catalogue of these vexations. We are of the profession, and feel the deepest interest in its honour and prosperity. Both are injuriously affected by these fees of office. When so much is paid for what is needless, little remains for what is needful. The honest, arduous, anxious labours of attorneys, barristers, and solicitors, are, in many instances, but ill remunerated, while the official who does nothing but what is

<sup>b</sup> Lord Chief Justice Hale, in his golden rules for a judge, expressly speaks of this shameful practice as existing in his day, and declares his intention not to be bribed directly by presents to himself nor indirectly by presents to his servants.

<sup>c</sup> See his pamphlet on Compensation to the holders of abolished offices.

merely formal, who needs no professional education, who has had no struggle for a chance of success, and who neither knows the parties nor cares what may be the result of the suit, receives a large and a certain profit. The Baconian axiom, that great pains require to be paid by great pleasures, is in this way disregarded, if not reversed in the law. The toiling practitioner suffers the pains; the calm, undisturbed, and unneeded official enjoys the pleasures. Let us not be supposed to object to officials as such. They are of us and ours. Where they have real duties to perform, and where their offices have been created to advance the interests of justice, no one more rejoices to see them, no one less grudges them their honourable emoluments. But their emoluments should come from the public funds and not from the individual taxation of the unfortunate suitor. In some instances, we would increase their numbers and not be niggardly of their pay. And the people at large are of our opinion. Where work is required to be done, John Bull never denies that it ought to be done well and to be liberally remunerated. But he does object to offices created merely to tax him for the benefit of favoured sinecurists. He carries his sound commercial ideas into politics and law, and while properly estimating good services, is little inclined to favour demands on his purse for that which is needless and useless. It is to be feared that the evidence before this committee shows that demands, not merely needless and useless, but actually injurious, are sometimes made upon him. It is against these that the country protests; it is against these that the interests of the profession, as well as of the public, are ranged; and the resolution for their removal will not be rendered the less strong by the fact, that they exist not merely in defiance of the general interest of the public, but to the oppression of the individual suitor,—that they operate to make the administration of justice cumbrous, slow, and expensive, and, in many instances, prevent the injured man from drinking at its fountain, or turn what ought to be its pure, wholesome, and refreshing stream, into a current of poison and death.

On the motion of Mr. Romilly a new committee has been appointed. From the composition of the committee it would appear that Mr. Romilly intends to confine its labours to official fees in courts of equity. It is as well that he should do so. Mr. Watson, who with so much ability and discretion conducted the inquiry last session,

will, probably, soon re-enter the house, and can then devote himself to the official fees demandable at common law. It is of advantage that the inquiry into each branch of the question should be conducted by a gentleman peculiarly acquainted with that branch. There is less liability to mistake, smaller danger of unsatisfactory yet puzzling answers, and greater chances in favour of the completeness and exactness of the inquiry and of a happy result to be anticipated from it. The period for making a court of justice a source of profit to the governing power has gone by. The administration of justice must be purified from the blot which that system has marked upon it, and every trace of that ancient practice which originated in the corruption of the judges, and extended from them to the officers of their courts, must be removed. The officers, like the judges, perform a duty for the public, and must be paid by the public. All the property in the empire receives an increased value from the security which the protection of the law affords to it, and the individual who has to exemplify the value of that protection by becoming a suitor in the courts is rather to be pitied than taxed for his misfortune. The rest of the community receives the benefit of his trouble and anxiety. The decision in the case of *A. v. Z.* saves the other letters of the alphabet from incurring the risk and annoyance of a lawsuit for a similar cause, and the public reap a solid advantage from the sufferings of the litigants. It is too much to impose on them a double taxation as subjects and as litigants, when their neighbours who gain the benefit of their litigation are taxed in only one of those characters.

## IMPRISONMENT OF SMALL DEBTORS.

THE committee of the Society for effecting an Amendment of the Laws relative to Bankruptcy and Insolvency, point in their report with evident satisfaction, and as a great achievement, to the provision which they caused to be inserted in the Small Debts Act, (8 & 9 Vict. c. 127,) and which provision was afterwards embodied in the County Courts Act, (9 & 10 Vict. c. 95,) authorising the imprisonment of small debtors for a period not exceeding forty days. The committee in their report (*ante*, p. 81,) describe this provision as giving "the power to imprison for debts under 20*l.*, which had been contracted in fraud, wilful



extravagance, or improvidence; such imprisonment not operating as a release of the debt." The principle embodied in the provision, in its present results and future consequences, is thus enthusiastically extolled :—

"Your committee can hardly exaggerate the value of the principle thus admitted and legalized. They consider it *the turning point* in the progress of legislation: men are to be punished, not because they are in debt, or because they cannot pay, but because they have been guilty of acts wilful and mischievous, by which the security of commercial property is endangered, lost, or annihilated, and society at large harassed and baffled in the needful transactions of commerce. This great principle thus established, and further acknowledged by the County Courts Act, it is the object of your committee to extend (by regulations of wholesome stringency) to the whole Law of Debtor and Creditor, and to apply with scrupulous regard to justice to all insolvents who may wilfully become so; and it is their full belief, that if such provisions were extended, a rapid and decided improvement in the habits and opinions of the mercantile class would result, and that those periods of commercial ruin, which destroy the many innocent with the few guilty, would prove less frequent and severe, and in the end cease altogether."

Now, without disparaging the intentions of the committee, or underrating their exertions, we must be excused if we decline to concede to them the glory they seem so ready to claim for themselves, of establishing for the first time by legislative enactment a principle of undoubted importance. The principle to which they refer in such eloquent language, has been embodied in several successive insolvent statutes, and has been constantly acted upon by those who administer that branch of the law, long before the society represented by the committee was thought of.\* The origin of the principle, however, is less important than

its extension in the enactment alluded to, and if that provision was merely as described by the committee, it would be much less objectionable than its present operation proves it to be. The terms of the enactment, as contained in the 1st section of the Small Debts Act, are as follow :—

And it shall be lawful for such commissioner or court to make an order on the said debtor for the payment of his debt by instalments or otherwise: and in case such debtor shall not attend as required by the said summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to disclose his property, or his transactions respecting the same, or respecting the contracting of the debt, or shall not make answer thereof to the satisfaction of the commissioner or court, or shall appear to such commissioner or court to have been guilty of fraud in contracting the debt, or of having wilfully contracted it without reasonable prospect of being able to pay it, or of having concealed or made away with his property in order to defeat his creditors, or if he appears to have the means of paying the same by instalments or otherwise, and shall not pay the same at such time as the commissioner or court shall order, then in any of the said cases it shall be lawful for such commissioner, or other presiding officer of such court, to order such debtor to be committed for any time not exceeding forty days to the common gaol," &c.

It will immediately be perceived, that the power of imprisonment conferred by this section is not restricted, as the committee appear to suppose, to debts "contracted in fraud, wilful extravagance, or improvidence." A debtor, not attending, and not alleging a sufficient excuse for attending when summoned, or a debtor who appears to have the means of paying his debt, and shall not pay the same at the time ordered, is placed in the same category with the fraudulent or improvident debtor. This provision has been in operation since the month of August, 1845. Many hundred persons have been imprisoned under it, in the various gaols throughout the kingdom, against whom there was no imputation of fraud or improvidence. In practice the course of procedure was, to call upon the debtor to state how he was prepared to pay the debt? If the answer was satisfactory to the creditor, an order was drawn up by consent to pay at the periods and in the proportions specified. If the answer was not satisfactory, the commissioner, or other presiding officer, inquired what amount the debtor was earning, or what income he had, and made an order with reference to the information thus acquired, for payment of

\* The present Insolvent Act, 1 & 2 Vict. c. 110, s. 78, provides, that if it shall appear to the court that any petitioner "shall have contracted any of his or her debts fraudulently, or by means of a breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or shall have fraudulently or by means of false pretences obtained the forbearance of any of his debts by any of his creditors, or shall have put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay, to any suit for recovering any debt or sum of money due from such prisoner," &c., he may be remanded to prison for a period not exceeding two years.

the debt "by instalments or otherwise." In either event, if the debtor was unable or unwilling to pay the instalments at the periods specified, he was liable, at the instance of the creditor, to be thrown into prison for forty days. The records of the Court of Bankruptcy will show, in how many instances debtors have been committed to prison for non-payment of the instalments ordered by the commissioners, and in how few cases there has been a commitment for fraud or improvidence. The committee are mistaken, therefore, when, in alluding to this provision, they say, men are punished under it, "not because they are in debt, or because they cannot pay, but because they have been guilty of acts wilful and mischievous." Practically, they are punished because they have incurred debts which they cannot pay; and the punishment is rather of a severe character. It is now notorious, that persons committed to prison under the provision above cited—which is to introduce such a happy revolution in our commercial habits—are subjected to the same prison discipline and regimen as convicted felons: and after imprisonment for forty days under such circumstances has been endured, the debt is not satisfied, and the debtor may be a second or a third time imprisoned for the same period.

Now assuming, and we do so merely for the sake of putting the proposition which follows, that the principle embodied in this enactment is a just principle, and that the punishment inflicted on debtors who are ordered to pay, and do not pay, is not unduly severe, why, we ask, is the law applicable only to cases where the debt does not exceed 20*l*.? If a creditor who has obtained a judgment for less than 20*l*. is entitled to punish his debtor under any circumstances, why not the creditor who obtains a judgment for 2,000*l*., or 200*l*., or 21*l*.? Is the selfish spendthrift, who enjoys a course of reckless extravagance at the expense of others, or the man of business,\* who keeps up a fine establishment, and deliberately spends year after year twice as much as his capital and his profits will admit, to be treated with more consideration and lenity than the man who has judgment signed against him for a debt not exceeding 20*l*.? No man possessed of property which can be turned into money, or friends to whose generosity he can successfully appeal, will subject himself to incarceration on the felon's side of a prison when this fearful ordeal is to be avoided by pay-

ment of 20*l*. The provision, therefore, presses exclusively on the needy man without property or friends. It is peculiarly and emphatically a law for the poor and not for the rich, and being a harsh and severe law, it is an outrage upon the spirit of the British constitution.

We must not be understood as charging the society of merchants, bankers, and traders, with being parties to the severe prison discipline to which offenders under the Small Debts Acts are subjected; nor can it fairly be imputed to them, that the provision upon which we have commented is limited in its operation to judgments for debts not exceeding 20*l*. We take it for granted, those who represent this society would have been bold enough to carry out their own principles, and if they had been permitted, would have framed the enactment so as to render it applicable to judgment debts of any amount. We would fain hope that they protested against trying the experiment in respect of the small debtor, and lament to find them congratulating themselves upon the establishment of a principle, under the practical operation of which the poor man winces, whilst the gentleman, or the large trader, who becomes insolvent, is suffered to escape untouched. It is putting even a just principle in jeopardy to embody it in a severe law, and direct its operation exclusively against those who are helpless and destitute of resources. We look for more enlarged views from those who undertake to improve and guide the legislature.

#### COURT OF APPEAL IN CRIMINAL CASES.

WE are sorry to find Sir George Grey declining to pledge himself to introduce a measure for the establishment of a court of criminal appeal. The Right Hon. Secretary admits there are cases in which a court of appeal might exercise a useful jurisdiction, and declares that it would be a great relief to those who preside at the Home Office to get rid of the responsibility which now devolves upon them by reason of the necessity of investigating criminal cases after conviction; but then, he says, there are difficulties attending the construction of a court of criminal appeal which are underrated by those who have not considered the subject, and he gives a triumphant explanation of certain individual cases, in which persons have been convicted and sentenced and afterwards pardoned, their

innocence having been satisfactorily established.

It is putting the question on a weak and a narrow ground, to say, that the cases brought under the consideration of the Home Office are as speedily or more speedily disposed of than they could be by a court of appeal. The cases *never* brought under the consideration of the Home Office are those in which, it is to be feared, injustice is so often done, and of the numerous applications made to the Home Office, how many are sufficiently investigated? The necessity for an application to the Home Secretary is a condemnation of the present system. No application is ordinarily made to such a quarter in civil causes, because the established tribunals of the country afford a sufficient assurance that justice will be done. If an appeal existed under proper restrictions in criminal cases, the result would be similar. The importunate applications now made to persons with real or supposed influence would be at an end, and it could no longer be conceived that justice was granted or withheld as matter of favour. Jurors, too, would no longer shrink from obeying the dictates of their own consciences, under the apprehension that a conviction, if founded in error, could never be corrected; and even judges would evince more firmness and resolution. That the question is not without difficulty we readily concede, but the difficulties could not be deemed insuperable by minister of Sir George Grey's ability and experience, who was really impressed with the expediency of establishing such an appellate jurisdiction, and disposed to direct his attention to the subject.

## THE LEGAL YEAR-BOOK, ALMANACK, AND DIARY FOR 1848.\*

HAVING some personal interest in this work, we must content ourselves by setting forth its contents, and stating that it is enlarged to double the size of the last year's volume, and we trust its subscribers will find it doubly improved.

The 1st Part contains a *Law Calendar and Time Table*, including Regulations of the Terms and Vacations; Return Days of Process; Orders in Chancery regulating Holidays; Statutes and Rules regulating Common Law Holidays; Law Offices, and Times of Attendance; and Times of Pro-

ceeding in Chancery, Common Law, and Bankruptcy.

The 2nd Part relates to *Parliament*, comprising the Statutes effecting Alterations in the Law, (with notes,) 10 & 11 Vict. The Statutes are arranged in the order of their general importance, and classed according to their respective subjects, viz. :—

I. *Law of Parliament*.—1. House of Commons Costs Taxation. II. *The Courts*.—1. Bankruptcy and Insolvency; 2. Chancery Affidavit Office; 3. Chancery Master-ship. III. *Poor Law*.—1. Administration of the Poor Laws; 2. Poor Removal; 3. Poor Removal (Scotland); 4. Rating Stock in Trade. IV. *Law of Property*.—1. Tithes; 2. Drainage of Land; 3. Commons Inclosure; 4. Commons Inclosure Amendment Act; 5. Copyhold Commission; 6. Highway Rates; 7. Turnpikes; 8. Trust Funds; 9. Copyright. V. *Ecclesiastical*.—Jurisdiction. VI. *Criminal Law*.—1. Juvenile Offenders; 2. Custody of Offenders; 3. Threatening Letters. VII. *General*.—1. Marriages; 2. Passengers. 3. Carriers. 4. Police of Towns; 5. Joint-Stock Companies. It also contains a List of Public, Local, Personal, and Private Acts, with a General Index to the Statutes.

The whole of the Standing Orders relating to Private Bills are given verbatim. 1. Appointment of Committees, &c.; Proceedings before Examiners and Committees; 3. Practice of the House.

Then follow the Ministry; the House of Peers and Officers; the House of Commons and Officers; with a List of Lawyers in Parliament.

The 3rd Part, under the head of "The Courts," contains all the New Rules and Orders of the Year; Judges and Officers in Chancery, Queen's Bench, Common Pleas, Exchequer, Judicial Committee of the Privy Council, Admiralty, Ecclesiastical, Bankruptcy, Insolvent Debtors, County Courts, Quarter Sessions, Colonial Courts, Criminal Courts, and Police. Magistrates and Law Officers of London; Recorders; Coroners; Clerks of the Peace; Magistrates' Clerks.

In the 4th Part lists of the following Commissioners are given: Poor Law; Lunacy Masters and Commissioners; Tithe Commissioners; Copyhold Commissioners; Real Property Commissioners; Woods and Forests; Metropolitan Buildings; Registrar-General of Births and Deaths; Perpetual Commissioners for taking Acknowledgments of Married Women; Commissioners for taking Affidavits.

Part 5 treats of *the Bar*, and contains the latest Regulations of the Inns of Court for the Admission of Students and Calling to the Bar; Queen's Counsel and Serjeants in order of Precedence; Barristers called 1846-7.

The 6th Part relates to *Attorneys and Solicitors*:—comprising Annual Registration; Examination Rules and Practical Directions; Examiners; Government Solicitors; Town Clerks; Parliamentary Agents; Incorporated Law Society; Provincial Law Societies; Metropolitan and Provincial Law Association; Law Association for the Benefit of Widows, &c.; United Law Clerks' Society, and a Plan of Solicitor's Accounts.

Part 7. *General*, including Law and Commercial Stamps; Regulations for Allowance of Spoiled Stamps; Assessed Taxes; Distribution of Intestates' Estates; Expectation of Life; Rates of Insurance: Post Office Regulations; Railway Information; Tables of Interest, &c.: Transfers and Dividends; Bankers; Regal Table; Annual Summary of Legal Business; Legal Obituary.

8thly. A *Diary* for 1848, with Notes of Business to be transacted, and Times of Proceeding, under numerous Statutes, Legal and General, &c.

The work, as its title indicates, is intended to comprise all the Statutes, Rules, and Orders, in any way interesting to the profession, year by year, with various Lists and Tables, and a large mass of Professional information constantly required for reference by men of business. It is submitted with some confidence that it will be found a useful handbook to all classes of practitioners.

## VACANT MASTERSHIP IN CHANCERY.

SAMUEL DUCKWORTH, Esq., one of the Masters of the Court in Chancery, died at Paris on the 3rd Dec. He was called to the Bar by the Honourable Society of Lincoln's Inn, in the year 1813, and practised in the courts of equity. He was one of the Real Property Commissioners, and was elected a member of parliament for Leicester in 1835. In March, 1839, he was chosen to fill the vacant Mastership in Chancery on the resignation of Mr. Cross.

He was a good lawyer, an amiable man, and much esteemed by all branches of the profession. It is too early yet to speak of his successor. One Mastership on the death of Mr. Lynch was abolished, and by some it is supposed that this further vacancy will not be filled up. There was a similar surmise regarding the late Taxing Mastership; but it is very unlikely that such desirable appointments will be

suffered to fall into disuse. Several names have been mentioned which we deem it premature to repeat.

## NEW REGULATION OF THE INNS OF COURT.

### LINCOLN'S INN.

8th Nov., 1847.

RESOLVED, That students of this Inn, having attained the age of 23 years, may be called to the bar after the expiration of five years from admission, 12 Terms having been kept, exercises performed, and *certificate produced of attendance on two courses of lectures*. Masters of Arts, Bachelors of Law of the Universities of Oxford, Cambridge or Dublin, and *students of this Inn*, not being graduates, but who on their application are examined in law and *pass a sufficient examination*, having complied with the requisitions in respect to terms, exercises, and *certificate*, may be called after the expiration of three years.

Resolved, That the present rule do come into operation on the last day of this Term, and that the students admitted before that day have the option of being called to the bar according to the regulation now in force.

Resolved, That this order be communicated to the other Inns of Court.

### INNER TEMPLE.

*Hilary Term*, 1847.

Unanimously resolved, That no one shall be elected to the Bench of the Inner Temple, unless he obtain the votes of the majority of the existing benchers, and that four black balls shall be sufficient to exclude.

These Rules are extracted from *Mr. Pearce's History of the Inns of Court and Chancery*—a very learned and interesting work, just published, and which we hope soon to notice fully.

## SPECIMEN OF CONTRADICTIONARY EVIDENCE.

ALTHOUGH we cannot undertake to report all the singular cases which occur in the New County Courts, we shall put on record such of them as appear to deserve it. Amongst these may be noticed the following curious *discrepancy* in the evidence of one of the defendants in a suit in the Westminster County Court, before Mr. *Moylan*, the learned judge of that tribunal.

### *Denny v. Flanagan.*

This was an action brought by a poor woman, named Denny, whose case has been repeatedly before the public, to recover the sum of 10s. from H. M. Flanagan, which she had paid to him for the purpose of seeing counsel to defend her son at the Middlesex Sessions.—Mr. Flanagan, on the case being called on, handed up to the learned judge a letter, purporting to be from Mr. Horry, the barrister.

It was addressed to the chief clerk of the court, and was as follows :

" *Denny v. Flanagan.*—Dear Sir,—An intimation has been made that my attendance as a witness is desired in this case. I would willingly attend, but am so situated to-day at this court, that I know not how to get from it. The defendant has therefore desired me to mention this, with a view, if convenient, of postponing the case.—Yours, &c.

" S. C. HORRY, C. C. Court."

" Nov. 27, 1847."

*Judge* : Now, Mr. Flanagan, when did you see Mr. Horry?

*Flanagan* : This morning, your honour, at his residence, No. 30, Charlotte Street, Pentonville.

*Judge* : Did you see Mr. Horry write this?

*Flanagan* : I did.

*Judge* : Where did he write it?

*Flanagan* : At his house in Charlotte Street; and when he gave me the letter he told me to give his compliments to your honour, and that he would attend any other day.

*Judge* : Now, Mr. Flanagan, you say that he wrote this letter in Charlotte Street; and do you know that he dates it not from Charlotte Street at all, but from quite a different place?

*Flanagan* : He did not write the letter in Charlotte Street at all, your honour.

*Judge* : But have you not already sworn that he did?

*Flanagan* : It is a mistake, your honour. I walked from Mr. Horry's house with him this morning to Clerkenwell Green, and going along, Mr. Horry went into a cigar-shop in Amwell Street, and wrote the letter upon the counter.

*Judge* : You have already told one untruth, and I think this is another. I shall take care to send this letter to Mr. Horry, together with the notes of your evidence. The letter is not dated from the cigar-shop, but from the Central Criminal Court.—*Daily News*, 29th Nov. 1847.

## SELECTIONS FROM CORRESPONDENCE.

### SOLICITOR'S LIABILITY.

A solicitor has in his hands a sum of money of a client to lend out at interest. He advanced it on security of chattels, and the assignment of the property contains a covenant to pay interest at 7l. 10s. per cent. Is the solicitor liable to the client by reason of such remainder of interest beyond the legal rate, the money being entirely lost?

M.

### INSURANCE.—FORFEITURE.

A. is lessee of a house, with a covenant to insure and the usual proviso for re-entry on non-performance of covenants. A's annual insurance expires at Christmas, but the premium is not paid until the expiration of 14 days thereafter; 15 days being allowed by the office for payment thereof. Considerable doubt exists,

whether the office is liable *beyond the year* : the extension of 15 days forming in general no part of the policy, and being inserted only in the proposals, cannot be legally connected with an instrument under seal. In such case has a forfeiture been committed for not insuring?

S. B. H.

### WRIT OF TRIALS TO COUNTY COURTS.

*To the Editor of the Legal Observer.*

SIR,—The following query involves a question of some consideration to the legal profession, inasmuch as the adoption of the writ of trial in actions of detinue, when the amount sought to be recovered is under 20l., and there is a probability of recovering 5l., so as to prevent the operation of sec. 129 of the new act, will probably be frequently resorted to.

"In case a writ of trial is directed to a judge of the New County Courts, will the evidence of the parties to the action be admissible under sec. 83 of the County Court Acts?"

T. G.

*Uttoxeter*, Nov. 26, 1847.

## VISITS TO THE OLD LAWYERS.

### LORD ALVANLEY.

MR. ARDEN (afterwards Lord Alvanley, M.R. & C.J.C.P.) had near connections at Pepper Hall, in the North Riding of Yorkshire; he was acquainted with many of the Durham families, and he sometimes attended Durham Sessions and dined with the magistrates. At one of these dinners he sat next to the chairman on the left. It was usual at such dinners to give the county families; they toasted Lord Darlington and the House of Raby, Mr. Tempest and the House of Wynyard, Mr. Lambton and the House of Harraton, (Lambton Castle was not then built,) Sir John Eden and the House of Windleston; and others. There were few remaining families. When the toast came to Mr. Arden, he was in great difficulties : he might, with some license, have given George Washington, President of the United States, and the House of Washington, (he was a descendant of an ancient Durham family); however, Mr. Arden got through his difficulty by giving a most honourable body and a house of some fame;—he gave the Justices of the County of Durham and the House—of Correction!

Lord Thurlow was much vexed when it was said that Arden was to be made Master of the Rolls : he said he wanted some man who would take part of his wallet off his shoulders, not burthen him with his. After the appointment the decrees of the new Master of the Rolls were much respected, very few were reversed. On the Bench he was not always dignified : he has been seen at the Rolls listening patiently to the argument of counsel, but like the bee in Shakespeare, his nose immersed in a large nosegay.

Lord Alvanley made an excellent Chief Justice of the Common Pleas. Lord Mansfield,

C.J.K.B., was Lord in his court, he and the judges of which were called Lord Mansfield and his liver and lights; but Lord Alvanley, supported by able puisne judges, went on comfortably, and the judgments are elaborate and highly satisfactory and worthy of the attention of the student and the lawyer.

Lord Alvanley was sitting at *nisi prius*, and there came on a horse cause; it was long and tedious, and the evidence was very conflicting. The Chief Justice got up and walked backwards and forwards behind the desks. A witness came who gave the direct lie to one of the opposite witnesses. Lord Alvanley stopped, looked at the witness, and walked silently on. At last the witness went beyond all bounds; the judge forgetting himself, involuntarily gave a loud whistle—the court was electrified!

All things must have an end: this venerable and excellent judge was so ill that it was apprehended he was dying. He anxiously asked of his physicians how long he might live; they said four-and-twenty hours; he said "it was short notice, for he had a great deal to do." However, he set about it manfully, and all was accomplished as he wished, and the good old judge died in peace.

#### LIVERY OF SEISIN. — MOORISH CONVEYANCERS, A. D. 1492.

Mr. Ford, the author of the Hand-Book of Spain, speaking of two gardens in Granada, which had been ceded to a prior, says,—“The original deed was copied into the *Libro Becerro* of the convent, from which we made an abstract. The ‘livery of seisin’ was thus:—Don Alonzo entered the garden pavilion, affirming loudly that he took possession; next he opened and shut the door, giving the key to *Mucafreto*, a well-known householder of Granada; he then went into the garden, cut off a bit of a tree with his knife, and dug up some earth with his spade. Such was the practice of Moorish conveyancers.”

#### APPRENTICESHIP IN THE REIGN OF ELIZABETH.

The subjoined indenture of apprenticeship is enrolled in the Assembly Book of the Corporation of Rye.

1588. March 20.—Thomas Peadle put himself apprentice to Henry Godsmark, flesher, (i. e. butcher,) and Jane his wife, for the term of ten years, to teach him or cause him to be taught the occupation of a flesher, finding him sufficient meats and drinks and woollen clothes, shoes, and all other things necessary during the said term, and in the end of the said term to give him double apparel, viz.:—apparel for holydays and apparel for working days; one hatchet, one sledge, one wimble and a knife, being tools applying to the said occupation, and 20s. of lawful money of England.”

[The provision for providing clothes for the apprentice at the end of the term, is a desirable one. It is acted upon in many parts of the country.]

## RESULT OF MICHAELMAS TERM EXAMINATION.

THE Candidates for the last Examination, exceeding 160 in number on the printed List, were reduced by various causes to 108, who underwent the ordeal at the Law Society's Hall. Master Turner presided. The other examiners were Mr. Austen (the Vice-President of the Society,) Mr. Shadwell, Mr. Tooke, and Mr. Wilde. One hundred and three were passed and five postponed.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

### BILLS FOR SECOND READING.

Railways. See p. 108, *ante*.

Roman Catholic Charitable Trusts.—Mr. Anstey.

Roman Catholic Relief.—Mr. Anstey.

Agricultural Tenant Right in England and Wales.—Mr. Pusey.

### NOTICES OF NEW BILLS.

Administration of Poor Law.—Mr. Bankes.

Appeal in Criminal Cases.—Mr. Ewart.

Practice and Costs of Solicitors in the Metropolitan Police Courts.—Mr. C. Pearson.

Acquittal of Insane Prisoners.—Mr. C. Pearson.

Trial of Prisoners without Grand Jury.—Mr. C. Pearson.

Employment of Convicts.—Mr. C. Pearson.

Juvenile Offenders. Mr. C. Pearson.

Altering Epiphany Quarter Sessions.—Mr. Parke.

### PRESIDENT OF THE POOR LAW BOARD.

Mr. Charles Buller has been appointed to this important office: the government have made an excellent choice.

### FEES OF COURTS OF LAW, &c.

A select committee has been appointed on the motion of Mr. Romilly, “To Inquire into and Report to the House on the Taxation of Suitors in the Courts of Law and Equity, by the collection of Fees and the amount thereof, and the mode of collection and the appropriation of Fees in the Courts of Law and Equity, and in all Inferior Courts, and in the Courts of Special and General Sessions in England and Wales, and in the Ecclesiastical Courts and Courts of Admiralty, and as to the Salaries and Fees received by the Officers of those Courts, and whether any and what means could be adopted with a view of superintending and regulating the collection and appropriation thereof.”

The following members have been nominated as the committee:—Mr. Romilly, Sir James Graham, Sir Frederick Thesiger, Mr. Hume,

Mr. Ewart, Mr. Walpole, Mr. Stuart Wortley, Mr. Henley, Mr. Solicitor-General, Sir Wm. Molesworth, Mr. Wood, Mr. Geo. Turner, Mr. Roundell Palmer, Mr. Headlam and Mr. Clifford; with power to send for persons, papers and records. Five to be a quorum.

Mr. Walpole has also given notice of a motion to call the attention of the House to the system of multiplying fees under the 9 & 10 Vict. c. 95.

#### COUNTY COURTS.

Mr. Granger has moved an address for a return from every County Court established under the 9 & 10 Vict. c. 95, viz. :—

1. The total number of plaints entered in each court, from the time when the act came into operation, up to and inclusive of the 30th day of November, 1847, specifying the number of plaints above 10*l.*; above 5*l.* and not exceeding 10*l.*; above 2*l.* and not exceeding 5*l.*; above 1*l.* and not exceeding 2*l.*; and not exceeding 1*l.*

2. The total number of days that each court has sat, within the above period, and the average number of hours comprised in each sitting.

3. The total number of causes tried by each court during the above period.

4. The gross total amount of money received

in each court, from the time when the act came into operation, up to and inclusive of the said 30th day of Nov., distinguishing the amount received for fees for each officer, and an account of the general fund, from the amount received to the credit of suitors.

5. The total number of causes tried in each court with the assistance of a jury; specifying the number of such causes in which a verdict has been given in favour of the party requiring the jury to be summoned.

#### PALACE COURT.

A return has been ordered on the motion of Sir F. Thesiger, of the several Plaints levied in this Court in which the Debt or Damages are laid under 20*l.* from 15th March, when the Small Debts Act came into operation; and a corresponding return for the same period in 1846.

#### FEES OF JUSTICES' CLERKS.

An Address had been moved for by Mr. Bouverie for a return from the Clerks of the Peace and Town Clerks in England and Wales of all Fees permitted to be taken by Clerks of Justices of the Peace, under 18 G. 3, c. 19, and 5 & 6 W. 4, c. 76.

### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

*Malins v. Greenaway.* Nov. 3 and 24. 1847.

SOLICITOR.—LONDON AGENT.—COSTS.

*The London agent of a solicitor who had been employed to prove a debt in an administration suit, ordered to pay the costs of proceedings taken by him in the Master's office with the view of preventing the diminution of the estate, but without authority from the original clients.*

THIS was a petition to obtain an order, compelling a solicitor of the name of Kirk, to pay the costs of proceedings taken by him in the Master's office, without authority. The cause in which these proceedings were taken, was an administration suit, and Mr. Kirk, as the London agent of a Mr. Buchanan, acted for Messrs. Darlington and Watson, who were creditors to a large amount. In the course of the cause an arrangement was entered into by Jane Greenaway, the administratrix of the estate, for the compromise of a claim due to the estate, which Mr. Kirk appears to have considered as calculated unnecessarily to diminish the estate. Mr. Buchanan, as whose agent Mr. Kirk had acted, was at the time dead, but Mr. Kirk considering himself still the solicitor for Messrs. Darlington & Watson, carried in to the Master's office a state of facts with the view of opposing the compromise; and on the 12th of January last, in answer to a suggestion by the plaintiff's

solicitor, that he was not authorized to take such a step, made an affidavit stating that he had authority. On the 15th the suit abated, and was not revived till the 8th of June. In the mean time the plaintiffs had communicated with Messrs. Darlington & Watson, to ascertain whether Kirk had their authority to oppose the compromise, which they denied. Nevertheless, Mr. Kirk, on the 15th of June, when he attended before the Master upon a warrant, with which the plaintiff had served him, persisted that he had authority. Further communications with Messrs. Darlington & Watson took place in consequence, and further attendance before the Master until, on the 15th of July, Mr. Kirk withdrew his opposition. The petition sought to make Mr. Kirk pay both the costs of the proceedings before the Master upon his state of facts, and those of the inquiry made into his authority.

Mr. Turner and Mr. Selwyn, for the petition, contended, that Mr. Kirk being only the agent of Mr. Buchanan and not directly solicitor for Messrs. Darlington & Watson, had no authority to take any step after Buchanan's death, unless for the purpose of completing the one object for which he had been employed, the proof of their debt; but that even considering him as their solicitor, his authority had ceased, and that therefore he must be personally responsible for the costs which otherwise the plaintiff could not recover. *Hubbart v. Philips*, 13 Mee. & W. 702.



Mr. Kindersley and Mr. Taylor, for Mr. Kirk, contended, that the authority to prove the debt was a sufficient general authority to authorize him in taking any reasonable proceedings to prevent the diminution of the fund out of which the debt was to be paid;—that Kirk was solicitor on the record, and it would be most inconvenient to hold that he could take no step after the death of the solicitor as whose agent he acted; but if he might take some steps, then why not any reasonable steps? lastly, that in equity there was no instance of a solicitor being ordered to pay costs of proceedings taken by him without authority, on the application of the parties against whom the proceedings had been taken; the application should proceed from those in whose name he had taken upon himself to act.

Lord Langdale, after stating the facts, said, that the whole proceedings appeared to him to have been taken without authority. They were therefore irregular, and the plaintiff was entitled to relief. The question was a novel one. It was not even how far a solicitor could take steps in a case without express authority from his client, but how far the agent of that solicitor could act on his own authority. He thought, however, that the case fell within the doctrine of *Wilson v. Wilson*, 1 J. & W. 457; and *Wade v. Stanley*, 1 J. and W. 674, and he should therefore order Mr. Kirk to pay these costs.

*Re Midland Railway Company.* Nov. 26, 1847.

PAYMENT OUT OF COURT. — ALIQUOT SHARE.—RAILWAY.

*On an application to obtain out of court an aliquot share of the purchase-money of land taken by a railway company, paid into court by the company under the Lands Clauses Consolidation Act, it is not necessary to bring before the court the parties entitled to the rest of the fund.*

THIS was a petition for the payment out of court of an aliquot part of the purchase money of land taken by a railway company, and which was standing in their names.

Mr. P. White, for the petition.

Mr. Speed for the railway company.

Lord Langdale at first appeared to consider that it would be necessary to serve all parties interested in the fund, but ultimately made the order, observing, that this was one of the few excepted cases to the general rule, as the railway company must be considered to protect the interests of the absent parties.

Vice-Chancellor of England.

*Dawson v. Dawson.* Nov. 25, 1847.

PAYMENT OF PURCHASE MONEY INTO COURT.—INCOME TAX.—STAT. 5 & 6 VICT. c. 35, s. 102.

*Where purchase money and interest are paid into court, the court allows no deduction to be made for income tax by the purchaser.*

THIS was a motion for the payment of a sum of purchase money and interest into court.

Mr. Babington, for the purchaser, asked that a sum equivalent to the income tax on it might be deducted from the interest, contending, that the stat. 5 & 6 Vict. c. 35, s. 102, authorized such a deduction. The words of the statute are, "And be it enacted, That upon all annuities, yearly interest of money, or other annual payments, whether such payments shall be payable within or out of Great Britain, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same shall be received and payable half-yearly, or at any shorter or more distant periods; there shall be charged for every 20s. of the annual amount thereof the sum of 7d. without any deduction, according to and under and subject to the provisions by which the duty in the third class of schedule (D.) may be charged, and the person so liable to make such annual payment, whether out of the profits or gains charged with duty or out of any annual payment liable to deduction or from which a deduction hath been made, shall be authorized to deduct out of such annual payment at the rate of 7d. for every 20s. of the amount thereof, and the person to whom such payment liable to deduction is to be made, shall allow such deduction at the full rate of duty hereby directed to be charged upon the receipt of the residue of such money and under the penalty hereinafter contained, and the person charged to the said duties, having made such deduction, shall be acquitted and discharged of so much money as such deduction shall amount to, as if the amount thereof had actually been paid unto the person to whom such payment shall have been due and payable."

Mr. Faber, contra, contended, that no deduction for income tax ought to be allowed, citing the case of *Holroyd v. Wyatt*, Leg. Obs. vol. 33, p. 550, where V. C. Knight Bruce, on a similar application, declined to allow a deduction on account of the income tax.

The Vice-Chancellor granted the order, but without the deduction for the tax.

*Mores v. Mores.* Dec. 2, 1847.

ABSCONDING OF DEFENDANT.—SERVICE OF SUBPENA. — APPLICATION TO HAVE CAUSE SET DOWN.

*Where plaintiff is unable to serve a subpoena on one of four defendants, but has proceeded with the suit against the other three, and has obtained an order for the cause to be set down as if fit for hearing, on the clerk of records and writs refusing to grant his certificate, the court will take upon itself to order the registrar at once to set the cause down for hearing.*

IN this case a bill was filed against four defendants. As to three of them, the usual proceedings had been taken, and the cause was in a fit state to be heard; but as to the remaining one, the plaintiff had been unable to discover



either him or his residence, so as to serve him with a subpoena and proceed with the suit. A short time since an application was made to the court on behalf of the plaintiff, stating these facts, verified by affidavit; and the plaintiff being unable to make oath that the defendant was out of the jurisdiction, the court ordered the cause to be set down as if it was in a fit state for hearing, whereupon the plaintiff went to the registrar to have the order drawn up, but he at first refused, on the ground of irregularity; subsequently he drew it up, but on the plaintiff's applying to the clerk of records and writs for his certificate of the cause being in a fit state for hearing, he refused to grant it, and consequently the cause could not be set down.

Mr. Beavan now applied on behalf of the plaintiff that the court might order the clerk of records and writs to grant his certificate.

The Vice-Chancellor said he at first thought it would be best to order the clerk to certify, but as the registrar, Mr. Wood, was in court, the shortest way would be to order him to set down the cause.

#### Vice-Chancellor Knight Bruce.

*Robinson v. Bell.* Nov. 12 & 13, 1847.

#### PRACTICE.—LIMITED ADMINISTRATION.

*On a bill filed by covenantees against the real estate of the covenantor, there not being a general administrator of the personal estate of the covenantor, but only an administration limited to the purposes of the suit: Held, that the plaintiff being entitled to, or able to obtain general letters of administration, the suit was defective for want of such general administration.*

ALEXANDER TIPLADY, by deed dated 16th March, 1814, covenanted with Bryan Robinson to pay him, his executors, administrators or assigns 500*l.* at the end of 12 months from the death of Jane Tiplady his wife, upon trust for the benefit of John and Stephen Robinson. By his will, dated 9th March, 1818, Alexander Tiplady charged all his property with payment of his debts, and bequeathed the residue of all his personal estate to his wife, and devised his real estate for the benefit of his wife for life, and then for the benefit of his daughter Alice for life, and then to be sold for the benefit of her children, and appointed his wife executrix. She proved his will, and applied the personal estate in payment of debts, (except the 500*l.*) The widow died in 1840, leaving Alice, then Alice Bell, surviving. Bryan Robinson, the trustee, died, having by will appointed his sister, Jane Robinson, executrix, and she proved the same. Jane Robinson also took out letters of administration of the estate of Alexander Tiplady, left unadministered by Jane Tiplady, limited to the purposes of the suit. The bill was filed by John and Stephen Robinson, to enforce the covenant against the real estate of Alexander Tiplady, and they stated their willingness, that if need be, the suit might be

treated as one on behalf of themselves and all other the unsatisfied creditors of Alexander Tiplady. The defendants were Mrs. Bell and her husband and their four children, the heir-at-law of Bryan Robinson, the covenantee and trustee of the deed of covenant, and Jane Robinson his executrix, who was also limited administratrix of Alexander Tiplady.

Mr. Russell and Mr. Phillips were for the plaintiffs, and Mr. Wigram and Mr. Stinton for the defendants.

An objection was made, that the personal estate of the covenantor and testator was not duly represented by the limited administration, for that the real estate could not be reached until it was proved that the personal estate was exhausted, and the limited administrator could not get in the assets, if there were any. The court would not leave the estate open to a new claim on behalf of any creditor, by making a decree without a full representation of the personal estate. It was the rule of court, that no decree should be made on behalf of a creditor against the real estate, which did not direct an account of the personal estate, and no such account could be taken in the absence of some one fully representing that estate.

Mr. Russell and Mr. Phillips, in answer to the objection, insisted, that as the only purpose for which the limited administration was brought before the court was for the purpose of establishing a claim against the personal estate, and not for the purpose of enforcing judgment, for payment out of personal estate was out of the question, there being none remaining, the suit was properly instituted. Moreover, it was laid down by Lord Redesdale, in the Treatise on Pleading, 4th edition, page 177, that such limited administration was enough to establish a claim, and that no limited letters ever issued without citing the next of kin, who, if there were any assets, would be presumed to come in and claim a general administration, the objection to the suit was not sustainable. Lord Redesdale was one of the highest legal authorities, and his opinion, living as he did all his life in the Court of Chancery, and being familiar with its rules up to the time of his death, ought to weigh much with the court. That assertion remained unchanged in his work from the first to the fourth edition, all of which were produced under his own personal superintendence. The following cases were also cited and observed on:—*Clough v. Dixon*, 10 Sim. 564; *Croft v. Waterton*, 13 Sim. 653; *Davis v. Chanter*, 14 Sim. 212; *Ellis v. Goodson*, 2 Coll. C. C. 4; *Faulkner v. Daniel*, 3 Hare, 199; *Cawthorn v. Chalie*, 2 Sim. & Stu. 129; and *Moores v. Choat*, 8 Sim. 508. The principle to be deduced from the whole of the cases seemed to be, that if in a suit the plaintiff, as here, only requires to establish a liability against personal estate, limited letters of administration are enough; but if he requires to enforce the payment of his claim, then he must have a general administration of the personal estate of the testator or intestate before the court.

Sir J. L. Knight Bruce, V. C. The present case stands, as I apprehend, thus:—It is a creditor's suit against the real and personal estates, or, at least, against the real estate of a deceased debtor, whose name was Alexander Tiplady. The plaintiff's debt or demand was thus constituted: it is not a legal debt or demand; it is one purely equitable; it is a debt claimed in respect of the plaintiff's being beneficially entitled to any advantage which may result from a covenant into which the testator entered with a lady of the name of Jane Robinson, who is now dead, but whose personal representative is not a defendant in the suit. Alexander Tiplady appointed his widow sole executrix; he died many years ago, I think more than twenty. She proved his will, and has since died intestate, as I collect. Of her there is not any personal representative; and of the testator, the debtor, there is not any personal representative, with the exception of such representative as is constituted by the letters of administration now before the court, which are letters of administration granted to a person in whom the legal right to sue on the covenant is vested, and who, therefore, I should have thought, might have obtained general letters of administration. Upon that point I am not clear, and I desire not to be understood as giving any opinion. There is this further fact in the case, that the plaintiffs, who are equitably entitled under the covenant to which I have just referred, are the next of kin, or two of the next of kin, of the deceased executrix. Now, upon these facts, it may be useful to consider the reasons for Lord Redesdale's statement upon the subject in the passage which has been read. He says:—"This seems to be required," that is the limited administration, "rather to satisfy the court that there are no assets to satisfy the demand, for although the limited administrator can, collect no such assets by the authority under which he must act, yet as the person entitled to general administration must be cited in the Ecclesiastical Court before such limited administration can be obtained, and as the limited administration would be determined by a subsequent grant of general administration; it must be presumed that there are no such assets to be collected, or a general administration would be obtained." Undoubtedly there might be many cases in which that observation of Lord Redesdale would directly apply in a particular manner. But this does not seem to be a case of that description, for the reasons I have stated. The plaintiffs themselves are the next of kin, or two of the next of kin of the deceased, who was the sole residuary legatee and are also equitable creditors of the deceased. What I should have thought it right to do in this case, if I had been satisfied that the plaintiffs could not obtain a general administration *de bonis non* to the deceased, it is not necessary for me to say. This case comes before me in a form in which I think myself bound to say, that the plaintiffs, in my judgment, could have obtained, and can now obtain, or could have procured, and can

now procure, general letters of administration *de bonis non* to the deceased. That being so, I think that in this case I ought to accede to the objection that has been made, especially considering the recent authorities in another branch of this court which have been cited during the argument. The case must stand over, with liberty to amend. I must reserve the costs.

Queen's Bench.

(Before the Four Judges.)

Hulls v. Lea. July 7, 1847.

ATTORNEY.—LONDON AGENT.—6 & 7 VICT. C. 73.

*Since the passing of the 6 & 7 Vict. c. 73, an attorney who is only admitted in the Courts of Queen's Bench and Common Pleas can recover for business done in the Court of Exchequer in the name of his London agents who are duly admitted and enrolled as attorneys of that court.*

THIS was an action for work and labour done as an attorney. The defendant pleaded, amongst other pleas, that this action was commenced after the passing of the 6 & 7 Vict. c. 73, intituled, "An Act for amending the Law relating to Attorneys and Solicitors practising in England and Wales," and that the same is now maintained by the plaintiff against the defendant for the recovery of certain fees, charges, and disbursements claimed by the plaintiff to be due to him from the defendant, for and on account of the prosecuting and defending by the plaintiff for the defendant of certain actions in the Court of Exchequer, and in no other court, in the names of certain other persons, to wit, N. & D., and H. D. R. there duly admitted and entitled to practise as attorneys of the said Court of Exchequer, as agents of the plaintiff in that behalf, and for no other cause or consideration whatsoever; that the work was done after the passing of the said act of parliament; and that the plaintiff was not the plaintiff nor the defendant in any of the actions in respect of which this action was brought, and at the time the said work was done the plaintiff was duly admitted an attorney of the Court of Queen's Bench and the Common Pleas, but was not admitted an attorney of the Court of Exchequer, and this the defendant is ready to verify, &c. To this plea there was a demurrer and joinder, on the ground that the plaintiff being admitted an attorney of the Court of Queen's Bench, and having conducted business for the defendant in the Exchequer in the name of attorneys of the Exchequer as his agents, is still entitled to recover.

Mr. Hayes in support of the demurrer. The question raised on these pleadings is, whether an attorney, admitted in the Queen's Bench, can recover for work done in the Exchequer in the name of his town agents, they being duly admitted attorneys of that court. This depends

on the construction of the 6 & 7 Vict. c. 73, because there was no doubt about the practice before that statute passed. The second section of that statute prohibits any person practising as an attorney unless duly admitted and enrolled, but it does not say of what particular court. The 32nd section prohibits agents from acting for persons not duly qualified as attorneys. The provisions of this statute are directed against illegal and unqualified practitioners, which is very different from the present case. *Latham v. Hyde*<sup>a</sup> only decided that an attorney practising in the name of another without his consent could not recover his costs. In the case of *Re Hodgson and Ross*,<sup>b</sup> the court held, that an attorney who, having been sworn and admitted, neglects for a year to take out his certificate, is not an unqualified person within the statute 22 Geo. 2, c. 46, s. 11. In *Jones v. Jones*,<sup>c</sup> the Court of Exchequer held that the 2 Geo. 2, c. 23, s. 10, did not apply to a London agent. The agents in London are the persons who really conduct the business, and their names appear on the writ. The court, therefore, has ample control over the attorney who conducts the business, and the provisions of the 6 & 7 Vict. c. 73, do not prevent the plaintiff from recovering in the present action.

*Dowling, Serjeant, contra.* This case depends upon the construction of the 6 & 7 Vict., and the cases that have been cited are not applicable, because they were decided upon former acts of parliament which do not contain the same strict enactments as the late act does. The 2nd section is very general in its terms, and enacts that no person shall be admitted to practise as an attorney unless he be admitted and enrolled and otherwise duly qualified. Section 27 enacts, that persons duly admitted in one court are capable of practising in all other courts on signing the roll of such court. That seems to be the test required by the legislature, and the plaintiff has failed to comply with it. Then the 35th section provides, that in case any person shall in his own name, or in the name of any other person, sue out any writ, &c., in any court of law or equity, without being admitted and enrolled as aforesaid, he shall be incapable of recovering his fees in such action.

Mr. Hayes was heard in reply.

*Cur. ad. vult.*

Lord Denman, C. J., now delivered the judgment of the court. The question raised on these pleadings for the opinion of the court is, whether an attorney admitted and enrolled in one court may practise in another court in which he is not admitted and enrolled in the name of another attorney who is admitted in such court. Now the statute 2 Geo. 2, c. 23, s. 10, enables an attorney admitted and enrolled of one court to practise in the other courts in the name and with the consent of an attorney of such other court. The statute 1

Vict. c. 56, s. 4, enables an attorney admitted of one court to recover costs for business done in any other; and the 1 & 2 Vict. c. 45, s. 3, confined the right to those who shall sign the roll of such other court. These statutes are now repealed by the 6 & 7 Vict. c. 73, and the question is, whether that statute prevents the plaintiff from recovering in the action. Now the 2nd section provides, that no person shall act as an attorney or solicitor unless admitted and enrolled and otherwise duly qualified. The plaintiff was duly admitted an attorney of the Courts of Queen's Bench and Common Pleas; he therefore had a general right to practise as an attorney, but he had not signed the roll of the Exchequer, and could not practise there in his own name. Then the 35th section provides, that no person shall, in his own name or in the name of any other person, sue out any writ or process without being admitted and enrolled as aforesaid. That section seems to contemplate the case of one attorney practising in the name of another, but there is nothing to show that the attorney must be upon the roll of the particular court in which the business was done. The 2 Geo. 2, c. 23, s. 1, provided that no person should act as an attorney in any court unless admitted and enrolled "in such of the said courts where he shall act as an attorney," and therefore the 10th section of that act became necessary to enable an attorney not admitted of a particular court to act as an attorney in that court in the name of another who had been so admitted. The late act does not contain any such enactment, and we are of opinion that the plaintiff is under no disability, and is entitled to recover.

Judgment for the plaintiff.

*Bowen v. Owen.* Michaelmas Term, 1847.

REPLEVIN.—TENDER.

*The tender of a sum of money where more is claimed is a good and valid tender of that sum, and the person receiving it does not thereby prejudice his right to recover the remainder; but a tender of a smaller sum which imposes a condition on the person accepting it that it shall be in full discharge of the debt, or in full of all demands, is invalid.*

THIS was an action of replevin in which there were several pleas, one of which was a tender of the sum of 25*l.* 5*s.* 7*d.* It appeared that the tender was made by a person named Thomas, who conveyed a letter from the plaintiff to the defendant, which was as follows:—"By the bearer, Thomas Thomas, I have sent the sum of 25*l.* 5*s.* 7*d.*, being one year's rent for ———." The defendant refused to receive the money, on the ground that more was due. On all the other issues a verdict was found for the plaintiff, but on the plea of tender, the learned judge being of opinion that the tender was conditional, a verdict on that issue was entered for the defendant, with leave reserved to move to enter a verdict for the plaintiff on that issue. A rule nisi having been obtained,

Dowl. 594. <sup>b</sup> 3 Adol. & Ellis, 224.

<sup>c</sup> 2 Mee. & Wels. 323.

Mr. Chilton now showed cause, and contended, that a tender to be valid in law must be without qualification, and without any limitation as to amount. He cited *Evans v. Judkins*,<sup>d</sup> where an offer of a sum of money to be accepted as the whole balance where a larger sum was claimed, was held not a legal tender. In *Sutton v. Hawkins*,<sup>e</sup> a tender of a sum as all that was due, was held not a good tender.

Mr. Watson, (with whom was Mr. Lush,) contrà, contended, that no condition was imposed by the tender. He cited, *Ball v. Parker*;<sup>f</sup> *Read v. Goldring*;<sup>g</sup> *Ecksteir v. Reynolds*;<sup>h</sup> *Henwood v. Oliver*.<sup>i</sup> (Stopped by the court.)

Lord Denman, C. J. All persons who go to make a tender do so for the purpose of extinguishing the debt. The doubts that have arisen on this subject are with respect to the conduct of parties, which, up to a certain period is quite correct. If a person who tenders money says, I will not part with the money unless the person who receives it will give a receipt for the whole debt or in full of all demands, which he has no right to do, that is a condition which invalidates the tender. A person to whom money is tendered should accept it, and then if he claims more he makes no admission.

Coleridge, J., concurred.

Wightman, J. I am of opinion that this is not a conditional tender. In the case of *Henwood v. Oliver*, which has been cited, Mr. Justice Patteson in his judgment, says, "The defendant who makes a tender always means that the amount tendered, though less than the plaintiff's bill, is all that he is entitled to demand in respect of it. How then would the plaintiff preclude himself from recovering more by accepting an offer of part, accompanied by expressions which are implied in every tender?" The judgment there given seems to me applicable to the present case.

Erle, J. I am of the same opinion. I think the party who tenders money has a right to exclude every supposition which can be made against him; if he requests to have a receipt in full discharge of the debt, or in full of all demands, he would then be imposing a condition which he has no right to do.

Rule absolute.

### Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

*Levy v. Drew.* Nov. 22, 1847.

#### COSTS OF AMENDMENT.—ERROR.—INSUFFICIENT TENDER.

*Interlocutory costs may be set off against each other by the party interested without leave to do so. When leave is given to amend on payment of costs, such payment is a condition precedent to amending.*

*If when costs are being taxed an error is made in the casting up, which is not discovered until after the Master has made his allocatur, the party to whose prejudice such error has arisen has no right to take upon himself to correct it; and if he tenders less than the actual amount found by such allocatur, such tender will be bad.*

THIS was a rule calling upon the plaintiff to show cause why the interlocutory judgment signed herein should not be set aside with costs. The facts are as follow. The plaintiff having declared against the defendant as drawer of a bill of exchange by the initial of her christian name only, (A. Drew,) the defendant demurred, and demanded a joinder in demurrer, and the plaintiff having taken out a summons to set aside the demurrer as frivolous, Mr. Baron Platt on the 12th of August made an order, that on payment of costs the plaintiff might amend. On the following 14th the plaintiff not having amended, the defendant signed judgment of non pros. Upon this the plaintiff took out a summons to set aside the judgment, which Mr. Baron Platt accordingly did with costs. On the 24th of August the plaintiff taxed his costs of setting aside the judgment at 3*l.* 11*s.* 6*d.*, and on the 26th the defendant's costs of the demurrer and amendment were taxed, and the Master gave his allocatur for 6*l.* 19*s.* 6*d.* It appeared, however, that in the course of taxation the Master disallowed an item of 4*s.*, which was omitted to be deducted in the casting up; and the Master's attention not having been drawn to the fact, his allocatur stood for 4*s.* more than it ought. On the same day a clerk of the plaintiff's attorney attended at the office of the defendant's attorney, and there tendered a receipt for the plaintiff's costs, and after explaining that the Master's allocatur for the defendant's costs was given for 4*s.* too much, he set off the plaintiff's costs against those of the defendant, and tendered the balance of 3*l.* 5*s.*, deducting in so doing the 4*s.* excess, and at the same time left an amended declaration. The clerk stated, that as his master was not within he had no instructions, whereupon the clerk of the plaintiff's attorney informed him that if they would send to the office of the plaintiff's attorney, they could have the balance which he had tendered. No application was made for the costs, nor was the declaration returned, and on the 30th of October, the defendant not having pleaded, the plaintiff signed interlocutory judgment. The present rule was moved for on the ground that as the plaintiff had not complied with the terms upon which alone he was entitled to amend his declaration, namely, in not paying the costs, the defendant was not in default in not pleading.

Hoggins showed cause, and argued, 1st, that the payment of the costs was not a condition precedent to the plaintiff's right to amend, for that the defendant had his ordinary remedy for his costs if not paid. 2nd. That as the plaintiff had tendered the real balance of costs due,

<sup>d</sup> 4 Camp. 156.

<sup>e</sup> 8 Car. & Payne, 259.

<sup>f</sup> 2 Dowl. N. S. 345.

<sup>g</sup> 2 M. & S. 86.

<sup>h</sup> 7 Adol. & Ellis, 80.

<sup>i</sup> Q. B. R. 409.

he had done all that was required of him, and that the defendant was bound to have pleaded in due time.

*Prentice*, contra, contended, 1st, that the payment of the costs was a condition precedent, *Nichols v. Bozon*, 13 East. 185; and 2nd, that as the plaintiff had not tendered the full balance according to the Master's allocatur, but had chosen to deduct 4s. upon a supposed miscalculation, he had not tendered the proper balance of costs, independently of which this was not a case in which the plaintiff was justified in setting off costs, inasmuch as the Master on taxation had given no permission for the purpose.

*Patteson, J.* The payment of costs was no doubt a condition precedent to amending, and I think the plaintiff was right in deducting his own from the defendant's costs in the way that he did, without seeking for permission to do so from any other authority. If, therefore, the actual balance had been tendered, I should have held that this is a regular judgment. But whether there was or was not an error in the casting up, the allocatur is for a precise sum, and the party who avails himself of his right to set off costs, should tender the exact sum as appears by the allocatur. As long as the allocatur remains, it must be taken to be for the correct sum, and therefore final. If there be a mistake, as it is said there was in this case, the party has no right to take upon himself to correct it, but should have applied to the proper quarter to have had it set right. The judgment, therefore, in this case was irregular.

Rule absolute.

### Common Pleas.

*Burton*, appellant, and *Gery*, respondent.  
Michaelmas Term, 1847.

(Southern division of the county of Northampton.)

#### QUALIFICATION TO VOTE AS OCCUPIER.—LANDS HELD IN SUCCESSION.—NEW NOTICE OF CLAIM.

*Where a party already on the register of voters in respect of the occupation of certain land, ceased to hold that land, and became and continued to be the occupier of other land in the same parish, but failed to send in any new notice of claim after such change. Held, that under the 4th and 40th sections of the 6 Vict. c. 18, he was not entitled to have his name retained on the register of voters, although it appeared that the description of his qualification in the register exactly embraced both the qualifications.*

At the court holden before the barrister appointed to revise the list of voters for the said southern division of the county of Northampton, for the revision of the list of voters for the parish of Cold Ashby, in the said division of the said county, Edmund Singer Burton objected to the name of David Attfield being retained on the said list.

The facts of the case were as follow, the

name of David Attfield stood thus on the register:—

David Attfield | Cold Ashby | occupier of land above 50l. | Own occupation. |

David Ashfield, being sworn, stated that during the 12 months of his occupancy he had held a farm of Mr. Loveday of sufficient value up to Lady-day, 1847, when he left it. At Michaelmas, 1846, he took another farm of Dr. Walker, also of sufficient value, in the same parish, which he held at the then present time, Oct. 7th, 1847. He had not made any new claim. The question for consideration was, whether the claim already on the register was sufficient to entitle him to vote in respect of successive occupation. The said Edmund Singer Burton quoted the case of *Bartlett v. Gibbs*, Lutwyche's Reg. Cases, vol. 1, part 1, page 73, in support of his argument against the vote of the said David Attfield. The revising barrister was of opinion that the qualification of the said David Attfield was sufficiently described in the said list, there having been no hiatus between the said occupations, and that it was not necessary for him to send in a new claim, and that the case of *Bartlett v. Gibbs* did not apply, and the revising barrister accordingly retained the name of the said David Attfield on the list of voters for the said county.

*Humfrey*, for the appellant. The question here is, whether a man who had in any previous year sent in his claim as occupier of land which he then held, but who afterwards ceases to hold that land, and becomes the occupier of other land of the same tenure, and exactly answering the description in the register, was not bound to send in a new claim.

*Maule, J.* Suppose a man living in a place called Rose Hill, and, there being several places of that name in the neighbourhood, he removes to another Rose Hill, I do not apprehend that without a new claim the act would be complied with. It is to enable parties to look at the property and see whether it was of sufficient value, that the claim is required by the act.

*Humfrey*. Under the express provisions of the 4th & 5th sections of the Registration Act, a new claim is required, and, if sent in, would have appeared on the new list of claimants, and thus notice given to the public of the change. He referred to the cases of *Bartlett v. Gibbs*, 5 Man. & Gr. 81; and *Gadsby v. Barrow*, Lutw. Reg. Cas.

*Hayes* for the respondent. The case of *Gadsby v. Barrow* was not applicable to the present case, as it related only to the joining of the value of certain property. So also the case of *Bartlett v. Gibbs* was decided on the ground of an insufficient description of a part of the qualification. But here the description was enough to embrace both the houses. Then, as to the provisions of the Registration Act, the 4th section only requires a claim to be made where a person "shall not retain the same qualification as described in the register," and that may mean the same as the register will describe. Then, by the 40th section, it is

expressly enacted, that where the description of the property of any person who shall be included in "any such list" shall be wholly omitted, or "be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list."

*Maule, J.* That section puts you out of court, I think. There is some leniency shown therein to a defect in the description of a party's place of abode, but with respect to the qualification there is none. The proviso at the end of the section declares, that where a party is objected to on the ground of his having changed his place of abode "without having sent in a fresh notice of claim, it shall be lawful for the barrister, on revising the list, to retain the name of such person on the list of voters, provided that such person, or some one in his behalf, shall prove that he possessed on the last day of July the same qualification in respect of which his name has been inserted in such list, and shall also supply his true place of abode."

*Hayes.* But what is to be taken as the meaning of the words "such list" in that section? Here there is a list containing a description which embraces both properties.

*Williams, J.* The qualification described in the list which is alluded to in this case, the party it is shown, had ceased to occupy at Lady-day, 1847.

*Hayes.* But the description equally applies to both the qualifications, and what necessity then can there be for sending in a new claim?

*Humphrey,* in reply, was stopped by the court.

*Wilde, C. J.* I entertain no doubt in this case either upon the strict construction of the statute, or the spirit and reason of its provisions. The 4th section expressly enacts, that where persons who are on a former register shall not retain the same qualification,—by which I understand not simply the same legal description of qualification, but the same property in respect of which the qualification had been claimed,—they shall send in a new claim to vote. I find, also, that where a party changes his place of abode, the act requires that he shall send in a new claim, and this, as well as the proviso in the 40th section, enabling the barrister, in case of a change of the place of abode, to retain the voter's name, although no

new claim be sent in, provided it is proved that on the last day of July he possessed "the same qualification in respect of which his name has been inserted in such list;" were material to show that the 4th section was framed with a view of giving full information whereby to ascertain the identity and sufficiency of the claimant's property. It is just as important that a party who ceases to occupy the property in respect of which he has already claimed should give notice of any change of property as that he should give the original notice; the very object of the legislature being that the qualification of the claimant should be open to investigation. It seems to me that the act requires a party claiming in respect of a successive occupation to send in a notice of claim of the property so held in succession, and there was very good reason why the legislature should so require. On the whole, therefore, I think the party in the present case was bound to send in a new claim, as he did not, according to the words of the 4th section, "retain the same qualification," and that the decision of the revising barrister is erroneous.

*Coltman, J.* It is clear that the party here was entitled, as far as qualification is concerned, to be on the register, the only question is, whether he has taken the proper means of securing his being registered. It is rather by implication than by the express terms of the act that any forfeiture of the right arises in this case, because section 4 enacts that the overseers shall publish a notice requiring persons who "shall not retain the same qualification or continue in the same place of abode," &c., to send in a new claim, which certainly leads to the result that it was the intention of the legislature to oblige such parties to send in a fresh claim. But the clause does not say expressly that unless such claim be sent in the right to be put upon the register shall be forfeited. The proviso at the end of the 40th section, however, showed distinctly that unless such claim in the case of a change of qualification be sent in, the party loses his right to vote.

*Maule, J.* Whether the qualification is the same or not is to be determined by looking at the property itself, describe it by what words you would, and if so, then it must be conceded that the party here is in the same situation as he would have been in if there had been a difference in the descriptions of the properties. There was just as much likelihood of being misled; and I think, therefore, a new claim was necessary.

*Williams, J.,* concurred.

Decision reversed.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Equity.

#### CONSTRUCTION OF STATUTES.

##### ARBITRATION.

*Submission to arbitration.—Rule of court.—Motion.*—The submission to arbitration may, under the 9 & 10 Will. 3, c. 15, be made a

rule of court, not only after the award has been made, but after the last day of the term following the publication of the award; and when, therefore, it is no longer open to either party to complain of the award, on the ground of corruption or undue practice.

An objection to the validity of an award apparent upon the award, is not an objection to making the submission a rule of court under the statute.

A motion to make a submission to arbitration a rule of court under the statute may be made *ex parte*: *Semble. Heming v. Swinnerton*, 5 Hare, 350.

Case cited in the judgment: *Wilkinson v. Page*, 1 Hare, 276.

#### CORPORATION.

*Trust.—Construction of deed.—Vendor and purchaser.—Invalid contract.*—The stat. of 27 Eliz. c. 20, authorized the corporation of Plymouth to construct a watercourse or conduit for bringing a supply of fresh water from a distance to Plymouth for public objects, as for supplying the ships and town, and to scour the haven. Mills were erected on the watercourse, and the corporation afterwards conveyed away a portion of their interest in the leat: *Held*, that the corporation had undertaken the performance of a public trust and could not divest themselves of the means of fully executing it; that the primary duty of the corporation was to provide for the public objects contemplated by the act, and that the surplus water only was after satisfying the public services to be applied for the use of the mills. The court also considered it to be doubtful whether the corporation could alienate the watercourse, or any part, for satisfying their own debt.

Upon the construction of the particular instruments, *held*, that by the conveyance of one-fourth "of and in the leat or watercourse," the purchaser acquired no interest of the water, other than such a part as remained after supplying the public purposes for which the leat was authorized to be made.

A hospital having a corporate charter, was established in close connexion with a municipal corporation. The ex-mayor was to be the governor, the master and assistants were elected from the corporation, and the mayor and the aldermen were visitors: *Held*, that the corporation and hospital were, in equity, incapable of contracting, and a purchase by the corporation of property belonging to the hospital was set aside. *The Attorney-General v. The Corporation of Plymouth*, 9 Beav. 67.

#### CORPORATION TRUSTEES.

The court will not make an order for filling up vacancies in charity trustees under the Municipal Corporation Act, unless it be satisfied that the existing number is practically inefficient, and that inconvenience arises from not having more. *Worcester Charities, in re*, 2 Phill. 284.

#### FOREST OF DEAN.

*Power of arbitrators.—Setting aside award.—Equity to enforce parol contract.*—Commissioners appointed under an act of parliament to set out the metes and bounds of mines and quarries in the Forest of Dean, and to fix the rent to be paid for the same: *Held*, under the terms of the act, to have no power to compel a miner to pay in money for by-gone workings, or to exclude him from the award if he refused

to make such payment. Commissioners appointed by an act of parliament to determine the respective rights of the Crown and the customary miners on Crown lands, had made an award giving a benefit to a miner, but had required such miner to submit to terms which they had no power to impose, and which the miner did not afterwards fulfil: *Held*, that after the time limited by the act for making the award had expired, the court would not set aside the award at the suit of the Crown, as it could not then restore the miner to his rights under the act.

In the case of an award made upon the faith of a parol contract, entered into by a party taking a benefit under the award, that such party would pay a sum of money to the Crown, an information by the Crown seeking specific performance of the parol contract, and thereby in effect to add the parol agreement to the award, cannot be sustained.

The agent employed by a miner in the management of his mines and in his communications with the commissioners for setting out the metes and bounds and fixing the rents and duties in respect thereof, is not therefore the agent of the miner for the purpose of making a contract with the commissioners, not within the powers which have been conferred upon them in that character.

*Semble*,—The refusal to pay a certain sum of money according to an agreement upon the faith of which an award was made, although it was a stipulation which the commissioners making the award were not empowered to insist upon, would be a ground upon which in equity the party to whom the monies were to have been paid might resist the performance of the award if the other party had sought the aid of the court to enforce it. *Attorney-General v. Jackson*, 5 Hare, 355.

Cases cited in the judgment: *Pember v. Mathers*, 1 Bro. C. C. 52; *Clarke v. Grant*, 14 Ves. 524.

#### FRAUDS, STATUTE OF.

1. *Effect of repudiation of trust by trustee.*—A. and B., for whom land had been purchased by C. with a view to its being resold in building lots on the land being conveyed to them, signed a paper writing purporting to be a memorandum of an agreement between them relative to the land, by which it was agreed "that they should each advance half the purchase-money, and receive interest on the same at 5 per cent., and that they were to have each one-third interest in the purchase, and to reserve one-third of the profits arising therefrom for C. in lieu of his commission for purchasing, selling, surveying, valuing, and laying out the land in lots, or any other services that might be required of him; but that it was clearly and distinctly understood that C. should have no power or authority whatsoever over the land, and that he should not be entitled to receive any compensation therefrom until the whole was sold and paid for." The land having afterwards greatly increased in value, A. and B. refused to recognize C.'s interest in the specu-



lation, and offered him a money compensation for his services. Whereupon C., who had objected from the first to the clause in the memorandum which excluded him from all control as inconsistent with the original terms for which he had verbally stipulated, filed his bill for an immediate sale of the land, and the court being of opinion that the defendants, by repudiating the trust as to C.'s share, had devolved upon the court the discretion which they had by the memorandum reserved exclusively to themselves as to the time of sale, declared C. entitled to one-third, and referred it to the Master to inquire whether it would be for the benefit of all parties that the land should be sold. *Dale v. Hamilton*, 2 Phill. 266.

2. *Partnership in dealing with land.—Agreement made and signed by third persons.*—A partnership agreement between A. and B. that they shall be jointly interested in a speculation for buying, improving for sale, and selling lands, may be proved without being evidenced by any writing signed by or with the authority of the party to be charged therewith within the Statute of Frauds; and such an agreement being proved, A. or B. may establish his interest in land, the subject of the partnership, without such interest being evidenced by any such writing. *Dale v. Hamilton*, 5 Hare, 369.

Cases cited in the judgment: *Morphett v. Jones*, 1 Swanst. 172; *Mundy v. Jolliffe*, 9 Sim. 413; *Crawshay v. Maule*, 1 Swanst. 518; *Fereday v. Wightwick*, 1 Russ. & Myl. 45; *Jeffereys v. Small*, 1 Vern. 217; *Jackson v. Jackson*, 9 Ves. 591; *Lake v. Craddock*, 3 P. Wms. 158; *Elliot v. Brown*, 3 Swanst. 489, n.; *Forster v. Hale*, 3 Ves. 696; *Taylor v. Salmon*, 4 Myl. & Cr. 159.

#### HEIR.

1 W. 4, c. 47.—An estate was sold to a party to a suit for payment of the testator's debts, and which by the disclaimer of a trustee was vested in the heir *pur auter vie*, with legal remainder to the children of A. (who was living) as tenants in common. The purchase-money was in court. The case appeared to be within the 1 W. 4, c. 47, so that no effective conveyance could be made until the death of A. *Held*, that the purchase-money ought not to be distributed. *Heming v. Archer*, 9 Beav. 366.

#### INCLOSURE ACT.

*Power of commissioners.—Public or private act.—Injunction.—Damage to watercourse or drain.*—An act of parliament empowering commissioners to inclose the common lands in a certain township, reciting the titles of certain landowners, and that it would be greatly for the advantage of the proprietors of the common lands that the same should be divided and inclosed, enacted that it should be lawful for the commissioners to set out and make such ditches, watercourses, and bridges, of such extent and form, in such situations as they should deem necessary in the lands to be inclosed; and also to enlarge, cleanse, or alter the course of, and improve any the existing ditches, watercourses, or bridges, as well in and on the same lands, as also in any ancient

inclosures or other lands in the township as they should deem necessary: *Held*, that the act did not empower the commissioners to alter the drains in the common lands so as to overload an ancient drain which flowed through the common lands from another township, and thereby to obstruct the drainage of the lands in such other township, to the damage and injury of the owners of such land.

Where an act of parliament empowers certain persons to deal with their own property or with property in a certain place or district, or defined by a certain description, and does not express by words, or by necessary implication import, that the legislature intended to affect the rights of other persons in other property, courts of law do not construe mere general words in the act as affecting the rights of strangers as to property not within the description of that with which the act expressly purports to deal.

Whether an act of parliament is to be deemed a public act binding on all the Queen's subjects, or merely a private act, depends upon the nature and substance of the case, and not upon the technical consideration whether the act does or does not contain a clause declaring that it shall be deemed a public act. *Dawson v. Paver*, 5 Hare, 415.

Cases cited in the judgment: *Sir F. Barrington's case*, 8 Rep. 136, a.; *Lucy v. Levington*, 1 Ventris, 175; 2 D'warris, 630; *Stead v. Carey*, 1 M. G. & S. 496.

#### INFANT.

*Custody under 2 & 3 Vict. c. 54.*—Order under the stat. 2 & 3 Vict. c. 54, that an infant daughter should be delivered out of the custody of the father into that of the mother.

Is it not necessary, in order to enable the mother to apply under this act for the custody of her child, that she should have obtained or be entitled to obtain a divorce *a mensâ et thoro*. *Bartlett, ex parte*, 2 Coll. 661.

#### INFANT TRUSTEE.

1 W. 4, c. 60.—An infant devisee had been ordered to convey real estate sold for payment of the testator's estate. He made default, and was not amenable to process. The court, under 1 W. 4, c. 60, s. 8, directed a person to convey in his place. *Thomas v. Gwynne*, *Thomas v. Thomas*, 9 Beav. 275.

#### INSOLVENT DEBTORS' ACT.

1 & 2 Vict. c. 110, s. 61.—*Misnomer.—Judgment.*—A judgment was entered up, &c. against Mr. H. under a warrant of attorney. In the judgment, warrant of attorney, &c., he was named W. H., his proper name being W. B. H.: *Held*, that the judgment was valid.

A judgment was obtained against a party under a warrant of attorney. He afterwards took the benefit of the Insolvent Debtors' Act: *Held*, that the judgment creditor was a necessary party to the conveyance of the insolvent's real estate to a purchaser, notwithstanding the 1 & 2 Vict. c. 110, s. 61. *Hotham v. Somerville*, 9 Beav. 63.

#### JUDGMENT DEBT.

*Debtor and Creditor.*—A. was entitled to an



annuity, which was secured by a covenant and by an assignment of leaseholds to her in trust to sell : *Held*, that her interest under the deed might be made available under 1 & 2 Vict. c. 110, s. 13, for payment of a judgment debt due from her. *Harris v. Davison*, 15 Sim. 128.

#### LANDS CLAUSES CONSOLIDATION ACT.

*Form of condition of bond.*—The condition of a bond given by the railway company, under the 85th section of the 8 Vict. c. 18, on taking possession of land before the purchase money was ascertained, was "on demand to pay to the owner, or on demand to deposit in the bank the amount of such purchase money when determined : " *Held*, that the condition was bad as giving the party claiming to be owner the option of compelling payment, either to himself or into the bank, whatever the title might turn out, and an injunction was granted till a proper bond should be executed. *Poynder v. Great Northern Railway*, 2 Phill. 330.

#### LIMITATIONS, STATUTE OF

1. *Deed poll.* — *Assignment.* — *Equitable charge.* — *Expectant legacy.* — In 1816, *A.* mortgaged an estate to *B.*, and covenanted to pay the mortgage money. In July 1817, *A.*, and *B.* as his surety, conveyed the property to *C.*, on trust to sell, and pay first a debt from *A.* to *C.*, which *A.* and *B.* also covenanted to pay; and secondly, to pay *B.*'s debts. In August following, *A.* executed to *B.* an equitable charge other property. In 1834, *C.* sold the estate and applied the produce in part payment of *B.*'s demand. In 1842, a bill was filed by *B.* against *A.* to realize the equitable charge : *Held*, that until the trust of the deed of July 1817 was exhausted in 1834, the covenant in the deed of 1816 subsisted wholly unaffected by time; that the debt and the personal remedy to recover it subsisted at the time the bill was filed, and that the equitable charge was therefore then operative.

A deed poll, in the form of a power of attorney, held in equity to amount to an assignment or to a covenant to assign.

Effect given to an equitable charge for valuable consideration upon expectant legacies. *Bennett v. Cooper*, 9 Beav. 252.

2. *Mortgage.* — *Tenant in common.* — *Issues.* — The personal representative of a deceased tenant for life of a mortgaged estate is not a necessary party to a bill by the mortgagee against the remainder-man, although the bill pray payment of an arrear of interest which accrued during his lifetime.

Where a mortgagee is also tenant for life of the mortgaged estate, the Statute of Limitations does not begin to run against the mortgage title until his death, and the same applies where the mortgagee is a tenant in common with others of the mortgaged estate.

Form of issues directed in a foreclosure suit, to ascertain whether a mortgage deed, 45 years old, had ever subsisted as a security, and if so, whether it had been satisfied. *Wynne v. Styan*, 2 Phill. 303.

#### LUNATIC TRUSTEE.

*Decree of sale of real estate.* — *Stat.* 1 W. 4,

c. 10, s. 18. — Tenant for life of estates decreed in a creditor's suit to be sold for payment of debts, is a trustee for the purchaser within the meaning of 1 W. 4, c. 60, s. 18. *Re Milfield*, 2 Phill. 254.

Case cited in the judgment : *King v. Leach*, 2 Hare, 57.

#### LUNATIC MORTGAGEE.

*Extra costs of reconveyance occasioned by lunacy.* — The costs of proceedings under the 1 W. 4, c. 60, s. 3, for the purpose of obtaining a reconveyance of a mortgaged estate from a lunatic mortgagee, are to be borne by the lunatic's estate. *In re Townsend*, 2 Phill. 348.

Case cited in the judgment : *Ex parte Richards* 1 J. & W. 264.

#### RAILWAYS.

*Shares.* — *Option to purchase.* — *Time of the essence of a transaction.* — A railway company having resolved on the 25th July to create a certain number of new shares, gave at the same time an option to every registered proprietor to take a certain number of those shares, provided he declared such option on or before the 10th August following. One of the registered proprietors, who was resident at Naples, was not apprized of the resolutions until the 12th August. But on that day he wrote to the secretary to the company declaring his option to take his proportion of the new shares.

*Held*, that the time fixed by the resolutions was final, and consequently that the plaintiff's declaration was too late. *Pearson v. London and Croydon Railway Company*, 14 Sim. 541.

#### REVIVOR OF SUIT.

1 & 2 Vict. c. 110, s. 18. — *Costs.* — The general rule that a suit cannot be revived for costs remains in force, notwithstanding the 1 & 2 Vict. c. 110, s. 18, gives the effect of judgments to decrees and orders of courts of equity. *Andrews v. Lockwood*, 15 Sim. 153.

Case cited in the judgment : *Jenour v. Jenour*, 10 Ves. 562; *Jupp v. Geering*, 5 Mudd. 375.

#### TENANT IN COMMON.

*Liability to account to co-tenant.* — *Stat.* 4 Anne, c. 16. — Whether one tenant in common of a farm, who has alone occupied and cultivated it, is liable, independently of contract, to account with his co-tenant for a moiety of the profits, *quære*?

An executor who had been tenant in common with his testator of a farm which the latter had alone cultivated, claiming to be a creditor of the estate for a moiety of the profits, the court directed an action to be brought to try the right. *Henderson v. Eason*, 2 Phill. 308.

Case cited in the judgment : *Wheeler v. Horne*, Willes, 208.

And see *Frauds, Statute of*, 2.

#### TRUST.

See *Corporation*; *Frauds, Statute of*, 1; *Infant Trustee*; *Lunatic Trustee*.

#### TRUSTEE, NEW.

*Appointment on petition.* — 1 W. 4, c. 60, s. 22. — The court may appoint a new trustee under 1 W. 4, c. 60, s. 22, although the instrument creating the trust contains a power to appoint new trustees. *Re Foxhall*, 2 Phill. 281.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 18, 1847.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

### ELECTION PETITIONS.—LAWYERS IN PARLIAMENT.

THE time limited by the orders of the House of Commons for presenting election petitions expired on the 7th instant, and it appears that 41 petitions have been presented, by which the seats of no less than fifty members are put in jeopardy. One of the petitions—that for Hythe, questioning the return of E. D. Brockman, Esq., the Recorder of Folkstone,—has since been abandoned; and in another case—that of the Montgomery boroughs, where a petition was presented,—the sitting member (the Hon. H. Cholmondeley) whose return was impeached, has already given notice that it is not his intention to defend the return. There are 39 petitions, however, still to be disposed of, questioning the return of 48 members.

Taking into account the disinclination which so generally prevails just at present to engage in any proceeding involving a pecuniary outlay that may be avoided, and the prevalent impression that the parliament lately elected is not destined to have a very protracted existence, the number of election petitions cannot be considered as much below the usual average. The period for questioning the sufficiency of the recognizances has not yet expired, and therefore it is possible that some of the petitions may fall to the ground upon objections taken before the Examiner of Recognizances.\* It is probable, also, that a certain proportion of

the petitions may be abandoned, or members petitioned against decline to defend their returns, before the select committees are appointed. Allowing for these contingencies, there will still remain from 20 to 30 cases to be contested.

Upon turning to the List of Lawyers in Parliament, (vol. 34, p. 341,) we are glad to perceive that there are but few whose seats are questioned on petition. There is a petition from the electors of Abingdon against the return of Sir F. Theiger, and a petition from Horsham against the return of Mr. J. Jervis, the son of the Attorney-General, both of which we hope will be unsuccessful. Mr. Fergus O'Connor's return for Nottingham is also questioned, we understand, upon the ground of want of property qualification only. In looking through the list of petitions, we observe that there is a petition from the electors of Lyme Regis, against the return of Mr. T. B. Adair, who carried the election against Sir Fitzroy Kelly by a small majority; and that Mr. W. H. Watson has petitioned, in his own name, against the return of Mr. H. S. Guinness for the borough of Kinsale. We trust that both the former members will be re-seated. For all these cases the recognizances are already perfected, and reported to be unobjectionable. Mr. Keogh, a member of the Irish bar, who was returned for the borough of Athlone, has also been petitioned against.

Of the eight solicitors who have been returned to serve in the present parliament, we rejoice to state, no one has been subjected to the annoyance and expense of an election petition. *Palmer's Guide to the House of Commons*

In our List of Lawyers in Parliament for

\* As to the practice of objecting to sureties under the 7 & 8 Vict. c. 103. See ante, vol. 34, p. 385.

Ireland we omitted the name of a highly respectable and able solicitor of Dublin, Mr. *John Sadleir*, member for Carlow.

No parliamentary proceedings beyond those connected with the examination into the sufficiency of the election recognizances, can be taken in reference to the disputed seats, until the re-assembling of parliament after the Christmas holidays. A certain number of select committees will then be appointed weekly.

## THE GOVERNMENT RAILWAY BILL.

THE bill introduced into the House of Commons under the sanction of her Majesty's government, and laid before our readers, (*ante*, p. 108,) "to give further time for making certain railways," is remarkable as being rather at variance with the spirit of modern legislation, and bearing some resemblance to those sumptuary laws, of which such numerous examples are to be found in the records of legislation during the seventeenth century. The measure, too, imperatively demands the prompt attention of all who are concerned or interested in the construction of railways, as it proposes to afford very limited opportunities for the consideration and determination of questions of great personal and public importance. A short analysis and review of the provisions of the proposed bill will sufficiently explain the grounds upon which we deem them deserving of notice.

It will be found, upon an examination of the bill, that its clauses, which are only nine in number, are divisible into those which are *permissive*, and one which is *prohibitory*.

The *permissive* clauses extend the periods, specified in various acts of parliament, for the completion of all unfinished railway works, under certain regulations, which appear to be clearly defined, and calculated to afford that protection and security to parties sustaining injury by the extension and delay to which they are fairly entitled. By the 1st section, railway companies desiring that the periods specified for the purchase of lands, or the completion of works, in their respective acts, should be extended, are to apply, in the first instance, to the commissioners of railways, stating what extension of time is required, and to what part of the railway work or land the extension is intended to apply, as well as the grounds for such application. By the next section, if

the railway commissioners should think there are sufficient grounds for entertaining the application, they are to require notice to be given by advertisement, showing when and in what manner any person aggrieved by such extension and objecting thereto may bring such objections before the commissioners. After hearing such objections, if any, the commissioners may, if they think fit, by warrant under seal, extend the period for the completion of works or the purchase of lands for such further time, not exceeding two years from the period specified in existing acts, as they think fit; and the extension is to apply to the whole of the works and lands, or to such parts as shall be specified in the commissioners' warrant. (Sect. 3.) After the granting of such warrant, the Railway Act referred to therein, authorising the construction of such railway or works, is to be construed as if the extended period specified in the warrant had been mentioned in the act. (Sect. 4.) The act is not to revive any powers which expired before its passing, or to affect any contract previously made; and notice of any such warrant is to be published in the Gazette within one month after it is granted. Owners and occupiers of land, &c., shall be entitled to claim in respect of the damage, if any, sustained by them by reason of the extension of time and of any delay in taking the lands and completing the works necessary for the construction of the railway, and such claim, if not settled by agreement between the company and the claimant, is to be settled by arbitration, or by the verdict of a jury, in the manner provided in disputed cases of compensation by the Lands Clauses Consolidation Acts, (8 & 9 Vict. cc. 18 & 19,) which are incorporated in this act, (ss. 7 & 8).

As already suggested, the *prohibitory* part of the proposed act is contained in a single section, which, apart from other considerations, does not appear to be as clearly and concisely framed as could be wished. The provision is as follows:—

"That no railway company authorized by act of parliament to construct a railway or any works connected with a railway, who have not before the 27th November, 1847, entered into any contract or agreement for the execution of any works which they were for the first time authorized by such act to construct, shall enter into any such contract or agreement within 12 calendar months after the passing of this act, excepting always from this enactment contracts and agreements for the construction of any part of any railway which by the act authorizing the construction thereof is substituted by way of

deviation from the line as originally proposed and authorized by some previous act, and which is abandoned in favour of such deviation, and also contracts and agreements for the construction of such other works which the company shall be authorized to proceed in constructing by the consent of so many of the shareholders as hold at least three-fourths of the whole number of shares in the said railway, such consent to be signified in writing, under their hands respectively, within six weeks after the passing of this act; and all contracts and agreements entered into in contravention of this enactment shall be utterly void and of none effect."—And, by a subsequent provision, contained in the same section, a certificate of such consent of the shareholders is to be deposited in the office of the commissioners of railways, and such certificate, or a copy under the seal of the commissioners is to be received as evidence in all courts, that such consent was duly given.

It appears to be the intention of those who framed this clause, absolutely to prohibit all railway companies from making any fresh contracts for twelve months, except in two cases,—1st, where the legislature has already authorised a deviation by way of substitution for some railway work previously authorised; and 2ndly, where the written consent of the holders of three-fourths of the shares in the company has been obtained within six weeks after the passing of this act. As we read the proposed enactment, the consent of shareholders is not required for entering into contracts for constructing or completing works substituted for others by any existing act of parliament. With respect to such works, it is intended that the directors, or other governing body, shall have the same power to enter into fresh contracts as they now have, and as if the proposed enactment did not become law. But with respect to contracts for works which do not fall within the description of works substituted for other works previously authorised to be executed, we presume it is meant that their validity shall depend upon the previous consent of three-fourths of the shareholders, such consent to be obtained within six weeks after the passing of the act. A question may arise under this clause as it is now framed, whether a company which has, prior to the 27th Nov. last, entered into a contract for the execution of some works they were authorised by an existing act to construct, may enter into fresh contracts following up or continuing the former contracts, notwithstanding the proposed clause. Supposing a contract to have been entered into before the 27th November for the earthwork on a particular line, and such

contract to be completed shortly after the 27th November, is the company prohibited from contracting for the iron rails for the portion of the line so prepared? If this question be answered affirmatively, the bill will operate practically as a suspension of railway works for a period of at least twelve months. We apprehend it will be found all but impossible to procure the written consent of three-fourths of the shareholders in any railway company, within the limited period of six weeks after the passing of the act, and it will be perceived that this provision does not contemplate that absent or other shareholders should be entitled to give their consent by proxy or power of attorney. The consent must be signified in writing "under the hands of the shareholders" respectively.

It is beside our purpose to discuss the policy or expediency of this measure; but, assuming it to be just and necessary, we may be permitted to doubt, whether the prescribed period of six weeks for obtaining the consent of three-fourths of the shareholders is not too short, and whether some regulation might not be framed, under which shareholders might depute to others the power of consenting on their behalf. However desirable it may be to check the outlay of money on the construction of railway works, it is not difficult to conceive that there may be works already in progress, the suspension of which for a period of twelve months would be most detrimental to the shareholders as well as the public. The proposed bill should be attentively watched in its progress through parliament, and the attention of the public promptly called to any alterations suggested in its provisions.

#### CHANGE OF NAME BY INCORPORATED INSURANCE COMPANY.

ALTHOUGH incorporated companies are exempt from many incidents to which individuals are subject, it would seem, from a recent decision of the Court of Queen's Bench,<sup>b</sup> that they are legally incapacitated from changing their names, except under the authority of an act of parliament, or under the authority of a charter granted by her Majesty. The point was raised and decided under the following circumstances.

"The Sheffield, Rotherham, and Chesterfield Fire and Life Insurance Company"

<sup>b</sup> *In re The Sheffield, Rotherham, and Chesterfield Fire and Life Insurance Company*, 16 Law Jour. 407, Q. B.

was established after the passing of the Joint Stock Companies' Registration Act, (7 & 8 Vict. c. 110,) and completely registered in that name, under the provisions of the act, on the 13th Dec., 1845. It was provided by the deed of settlement under which the company was established, that two-thirds of the shareholders should have the power to change the name or style for the time being of the company, and pursuant to this provision, it was subsequently resolved at a board of directors, and duly confirmed at two meetings of the shareholders by the votes of two-thirds of the shareholders present, that the name of the company should be changed to "The North of England Fire and Life Insurance Company." A return of this change of name was made, in the form required by the act, to the Register of Joint-Stock Companies, who declined to register the return, and also declined to register a supplemental deed executed by the shareholders for the purpose of effecting the change of name of the company, the ground of such refusal being, that the name in which the company was completely registered could not be changed. The company thereupon obtained a rule, calling upon the Register of Joint-Stock Companies to show cause, why a mandamus should not issue directing him to register the return of the change of name.

In support of the rule it was contended, that a change of name was not expressly prohibited by the stat. 7 & 8 Vict. c. 110; and that as trading co-partnerships were at liberty to change their style, there was no valid reason why joint-stock companies should not have the same power. On the other hand it was said, that the name was of the essence of a corporation, and great inconvenience might arise if after actions were commenced against a company the name of the company could be changed.

Having taken time for consideration, the court pronounced a deliberate opinion, that after a company has been completely registered under the 7 & 8 Vict. c. 110, so as to be incorporated by the name set forth in the deed of settlement, such incorporated company has not the power to change its name. The identity of name, it was said, was the principal means for effecting that perpetuity of succession, with frequent change of members, which was an important purpose of incorporation; and, though the Queen by her prerogative might incorporate by a new name, the general principle was, that such a change required the same power as created a corporation.<sup>c</sup> The

change of name by unincorporated joint-stock companies was expressly forbidden by the stat. 1 Vict. c. 73, s. 7, and a similar provision was probably considered unnecessary in the 7 & 8 Vict. c. 110, because the companies were by that act incorporated, and the general principle already adverted to was applicable. Upon these grounds, the court determined, that the company had failed to show that they were entitled to the change of name they claimed to have registered, and the rule for a mandamus was therefore discharged.

## NEW BILLS IN PARLIAMENT.

### ROMAN CATHOLIC CHARITABLE TRUSTS.

THIS is a bill for the better administration of charitable trusts for the benefit of her Majesty's Roman Catholic subjects. It recites that by 10 Geo. 4, c. 7; 2 & 3 Will. 4, c. 115; 7 & 8 Vict. c. 102; and 9 & 10 Vict. c. 59, certain penal enactments made and passed by the parliament of England, the parliament of Scotland, the parliament of Ireland, and the parliament of Great Britain respectively, against the Roman Catholic religion and worship, and the teaching, profession, and practice thereof, and the disposition of property for charitable purposes connected therewith within this realm and the dominions thereunto appertaining, have been for ever repealed: but that doubts are entertained as to how far the same respectively have operated to make lawful such uses, trusts, or dispositions of real or personal property for the benefit of Roman Catholics within Great Britain and Ireland, and the other dominions of her said Majesty, as, before and at the respective times of the passing of the said acts respectively, were or were accounted to be superstitious or unlawful: and that from divers periods, for the most part anterior to the passing of the said repealing acts respectively, or some of them, real and personal property, of considerable amount in the whole, hath been in numerous cases given or disposed, or holden to, upon or subject to certain charitable uses, trusts, or purposes for the benefit of Roman Catholics within England and Wales, but which uses, trusts, or purposes before and at the respective times of the passing of such acts or some of them, were or were accounted to be superstitious or unlawful; and in order to prevent the discovery of such uses, trusts, or purposes, and the forfeiture of such property respectively, the administration of the same hath been exercised without any express provision being made, or order taken for securing the due administration of the said property respectively, in conformity with the uses, trusts, or purposes to, upon, or for which such

were: *Bac. Abr. Corporation*, c. 1; *The King v. The Bailiffs of Ipswich*, 2 *Ld. Raym.* 1233; *Mellor v. Spateman*, 1 *Wms. Saund.* 339, a; and *Mellor v. Walker*, 2 *ibid.* 2.

<sup>c</sup> The authorities cited in the judgment;

property was so given or disposed, or holden of the same, whereby it hath in sundry cases happened that the said trust premises have been and are diverted from the several uses, trusts, or dispositions, to, upon, or subject to which the same ought to have been administered: that it is expedient to remove such doubts, in order to prevent such misapplication. It is therefore proposed to enact:

1. The said acts and this act to have relation to the times when the charitable trusts were created.

2. Roman Catholic charitable trusts not to be accounted superstitious or unlawful, if in conformity with their religion. Not to be affected merely because the founder or any person holding or enjoying the same shall happen to be a monk or jesuit.

3. Where there is no express declaration of trusts, they shall be collected from twenty years usage, if in accordance with the laws of the Church of Rome. Proviso, that if there be an express declaration of trusts, no such usage shall prevail against it.

4. Roman Catholic charitable trust property to be permanently dedicated to the purposes of the trusts, and the laws and usages of the Roman Catholic Church, particularly with reference to appointments to and removals from ecclesiastical livings or endowments.

5. That where at the time of the passing of this act, or at any times or time previous thereto, any real or personal property clearly and expressly given or disposed or holden by any persons or person to, upon, or for any charitable uses, trusts, or purposes of a specified or ascertained nature, for the benefit of Roman Catholics in England or Wales, or the produce or income of such property hath or have, nevertheless, wholly or in part been diverted from such uses, trusts, or purposes, and applied to, upon, or for other charitable uses, trusts, or purposes, which, albeit for the benefit of Roman Catholics, were not directed, specified, or contemplated by such persons or person respectively, then and in every such case it shall be lawful for the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal for the time being, or the Master of the Rolls for the time being, or (where such property, produce, or income was or is situate or applicable within the county palatine of Lancaster) for either of the said judges respectively, or for the Chancellor of the Duchy of Lancaster for the time being, and the said judges respectively and each of them, are and is hereby respectively required, upon any such petition as is hereinafter provided being presented to them or him respectively by any persons or person whomsoever in that behalf, either to direct that such property, produce, or income respectively, (as the case may be,) shall be wholly or partially restored and applied to the uses, upon the trusts or for the purposes to, upon, or for which the said property, produce, or income respectively was so originally given or disposed or so holden as aforesaid, or else to grant to

the persons or person presenting such petition, or to the persons or person respectively so holding, enjoying, or administering as aforesaid, such relief or indulgence in that behalf, or to make such other order, or give such other direction in the premises, as shall to such judge or judges respectively seem equitable or expedient under all the circumstances of the case: Provided always, nevertheless, That no person so holding, enjoying, and administering as last aforesaid shall be answerable for the acts and defaults of any other persons or person in that behalf: Provided also, That such persons or person respectively shall not be called upon in any case to make good, restore, replace, or apply any such arrears of produce or income as aforesaid, where such produce or income shall have been and continued to be so diverted, for the period of twenty years next before the passing of this act, and that no such persons or person respectively shall be called upon to make good, replace, restore or apply any arrears of produce or income which at any time or times before the passing of this act shall have been by them or him respectively *bonâ fide* applied to, upon, or for such other or substituted charitable uses, trusts, or purposes as aforesaid.

6. Memorials of charity trust estates exceeding 40s. in annual value to be enrolled in Chancery. 9 Geo. 2, c. 36.

7. Accounts of receipts and expenditure to be kept and audited, and a statement of the same and of the debts to be published once in every three years as the court shall direct.

8. Where any trust is or has become impossible, or improper, or not desirable to be performed, or cannot be performed with safety, any of the persons administering the same, or in their default, any other person, may present a petition to one of the courts of equity for relief, which shall be heard summarily and determined.

9. In cases of non-compliance with the requisitions of this act, or of any breach of trust or mismanagement, any person may present a petition to one of the courts of equity, where the same shall be summarily heard and determined.

10. That where any such petition as aforesaid shall have been presented by any persons or person so holding, or enjoying, or administering as aforesaid, or by any other persons or person, whether interested or connected as aforesaid or not, and it shall appear to the court to which such petition shall have been so presented, that in order to grant or make the relief, order, or direction thereby prayed, or which the nature of the case requires, it will or may be necessary or proper to ascertain what persons or person are or is interested in, or what is the nature of any such charitable use, trust, or disposition as aforesaid, or how the same is to be carried into effect, or to direct an account to be taken of the assets of any person or persons deceased, who in his, her, or their lifetime, was or were in anywise connected with or interested in any property, produce, or

income holden, to, upon, or subject to any such charitable use, trust, or disposition as aforesaid, or the administration, management, or enjoyment thereof, or to order the personal representatives or representative of a deceased testator, to pay to the persons or person holding or administering, or to hold or administer such property, produce, or income, the amount of any legacy bequeathed to, upon, or subject to, or in aid or furtherance of such charitable use, trust, or disposition by such testator, or to declare and direct the execution of the trusts of any will or codicil, whether being or not being the original instrument whereby such use, trust, or disposition was limited, or to compel third parties, or a third party, deriving or claiming to derive any benefit or advantage from any breach or breaches of trust, or mismanagement committed or suffered by any persons or person holding or administering such property, produce, or income, to make full or other restitution or satisfaction in that behalf, or otherwise to deal with, or make or give any declaration, order, or direction concerning the rights or interests, or pretended rights or interests of any third parties or party, in any or either of the subjects of such petition, or in any other subject connected therewith, it shall, nevertheless, be lawful for such court, and every such court is hereby required to hear and determine the matters aforesaid respectively, or such of them as shall be or shall appear to be necessary or proper to the granting or making the relief, order, or direction thereby prayed, or such as the nature of the case shall require, and to make such order or direction in that behalf as shall seem meet, and as effectually in all respects as if the said matters respectively had been brought to a hearing before the said court, upon a bill of a complaint, or information filed by or on the relation of the said parties or party respectively in that behalf.

11. Proceedings not liable to stamp-duty.

12. That for the purpose of hearing and determining any such petitions or petition as aforesaid, this act and the acts of parliament next hereinafter mentioned; (that is to say), an act passed in the 53 Geo. 3, c. 24, intituled, "An Act to facilitate the Administration of Justice," and an act passed in the 5 Vict. c. 5, intituled, "An Act to make further Provisions for the Administration of Justice," shall be construed together as one act, so far as the same are consistent and compatible with each other: Provided always, That where any such petition as aforesaid shall have been presented to the Chancellor of the Duchy of Lancaster for the time being, the same may be heard and determined either by such Chancellor or Vice-Chancellor of such duchy, according to the rules and orders, course and practice of the court of the said duchy, touching and hearing and determining of petitions presented to the said Chancellor, and as fully and effectually as if such rules and orders, course and practice had been inserted in or incorporated with this act.

13. Orders to be final unless appealed from within two years after entry.

14. Appeals shall lie to the Lord Chancellor or to the House of Lords, at the option of appellants, but not both.

15. That no charitable use, trust or disposition of real or personal property, or of any produce or income of such property for the benefit of Roman Catholics in England and Wales, limited or made at any time before the passing of this act, shall be annulled or avoided, or deemed or taken to be null or void, merely because such use, trust or disposition had been so limited or made otherwise than by deed indented, sealed and delivered in the presence of two or more credible witnesses, 12 months at least before the death of the persons or person limiting or making the same, and enrolled in the said High Court of Chancery, within six calendar months next after the execution thereof, or (in case of stock in the public funds) otherwise than by transfer in the public books usually kept for the transfer of stock, six calendar months at least before the death of such persons or person so limiting or making the same as aforesaid.

16. Provided that a deed declaring the uses, &c. be enrolled, or petition presented, within 12 months, &c.

17. Such limitations made valid for ever. 9 Geo. 2, c. 36.

18. That nothing in this act contained shall be construed to affect any law now in force for securing or strengthening the present church establishments, or the rights, properties, or privileges thereof, or the patronage of or presentation to the benefices of the same, or in anywise to dispense with any of the said several formalities prescribed by the said act of the 9, Geo. 2, in relation to any such charitable use, trust or disposition as aforesaid, for the benefit of Roman Catholics in England and Wales which shall be limited or made *after the passing* of this act; and that nothing in this act contained shall extend to give effect to any gift, disposition, will, deed or assurance heretofore avoided by any entry, possession or other legal or equitable means whatsoever, or to affect or prejudice any action at law or suit in equity, commenced at any time before the passing of this act.

19. Not to extend to Scotland, Ireland or the colonies, unless otherwise provided.

## LEGAL EDUCATION.

### EXAMINATION OF BARRISTERS.

A PAMPHLET called "A Supplement to the Report of the Select Committee on Legal Education, containing the evidence of Mr. Kaumensentz," has just been published, from which we shall extract a few passages for the amusement, if not the edification, of our readers. The author approves of the examination of attorneys and medical men, but objects to that of barristers as unnecessary and useless. He thus commences:—



"While 'The Select Committee appointed to inquire into the present State of Legal Education in England and Ireland, and the means for its further improvement and extension,' were engaged in their immortal labours, a person of the name of Kaumensentz presented himself at the door of the committee-room, and demanded to be examined. At first he was refused admittance by the usher, on the ground that he was not known to any member of the committee; but he ultimately succeeded in getting a hearing."

"Mr. Kaumensentz" having (in imagination) been called and examined, was thus questioned:—

"1. It is understood that you object to the proposed plan of requiring students of law to pass an examination before they are admitted to the Bar?—Of course I do.

"2. Will you state your reasons?—I think it rather rests with the advocates of the plan to show that it is *not* objectionable. All examinations are in their nature mischievous; they encourage a system of 'cramming,' and of hasty superficial study; by requiring all candidates to come up to a certain fixed standard of knowledge, they prevent, or at all events impede, students from pursuing one particular branch of their profession according to individual taste and genius, and thus check one great source of the advancement of learning—the sub-division of subjects; the natural effect, in short, is to create and foster mediocrity. Besides, to a grown man, entering seriously on what is to be the serious business of his life, it is most offensive to find himself compelled to return to the condition of a schoolboy, except in cases where his reason tells him that such a course is necessary for the general good. In one or two cases, as those of the *attorney* and the *medical man*, the safety of the public requires that their competency should be ascertained before they are allowed to practise; but the safety of the public, that is, *self-defence*, is the only ground which can justify any interference between a man and the free licence of exercising the profession of his choice.

"3. What distinction can you draw in this respect between the attorney or medical man, and the barrister?—The nature of the professions is entirely different. Medical men and attorneys are to be employed by persons who are not capable of judging of their acquirements, and who are therefore obliged to take them on trust; they are liable to be called on to act suddenly, and in cases of vital importance. It would, therefore, be a great evil to the public if people were allowed to hold themselves out as medical men or attorneys without having a competent knowledge of their respective callings, and therefore in *self-defence* we require them to submit to an examination. None of this reasoning applies to the barrister. He is employed solely by people perfectly capable of judging of his powers and capacity, namely, *he attorneys*: he is *not* liable to be called on

to act in sudden emergencies, and it can do no harm whatever to the public, that 5,000 persons who do not know one word of law should have the privilege of wearing wigs and calling themselves barristers, with leave to practise as such—if they can get any business.

"4. But 'is this profession *alone* to be excluded from the benefit of a test of which *every other* possesses the advantage? Is the advocate to be *the only man in the community* of whose competency to perform his duties we do not require a satisfactory test?'—I should say that is one of the most audacious pieces of misrepresentation I ever heard. The fact is, that there are but one or two professions which possess the 'advantage' of the test of examination, and those are the exceptional reasons I have mentioned. I should like to know what 'satisfactory test' we have (by *direct* means), of the competency of the banker or the merchant, of the journalist or the reviewer, of the country magistrate, the member of parliament, the cabinet minister,—in short, of the ninety-nine hundredths of the men who exercise a respectable calling in the world? Why should not the barrister be left to be tried and tested by that ordeal of public opinion which is found practically sufficient in those cases,—the judgment of his employers, his companions, and the public? I never heard any argument in favour of what is now called Legal Education, that is, *compulsory* education and examination before admission to the bar, which would not apply with exactly the same force to the case of candidates for parliament, or for the premiership."

Further on, the supplement thus reports:—

"6. But does it not sometimes happen that barristers with some showy acquirements, and technical knowledge, but without real solid learning, are able to get more business than they deserve?—No doubt it does sometimes happen.

"7. Do you not think the plan of examinations would prevent this?—I do not think that the man who has dexterity enough to take in the most trying tribunal in the world, consisting of the attorneys who are employing him, and the companions and rivals who are watching him, through years of actual practice, would find it very difficult to humbug two or three professors in a set examination. I do not imagine that a green baize table-cover, and a leaden inkstand, are such an Ithuriel's spear as all that.

"8. It is complained that there is a great deficiency in what we call the Philosophy of Jurisprudence, among even our most successful lawyers. Do you consider that to be the case?—So far as I understand the term, I believe it is.

"9. Do you not attribute this to the want of systematical education?—If you mean that people don't know what they never learned, of

\* See "Dublin University Magazine," July, 1847.



course I do. But the cause of the want of this philosophy lies in the nature of our laws, which are peculiar to this country, and very technical and unsystematic, and in the little communication we have with other countries on matters of international law, owing to our insular position and to other circumstances. Of course, as there is little demand for this species of learning, few people devote their time to providing a supply of it. If you want to have great jurists in this country, you must begin by introducing a new system of law."

The following pinching question is then put:—

"13. You consider then that it is no part of the duty of the Inns of Court to establish lectureships, or otherwise to contribute towards the spread of legal education?—Excuse me, I never said that; I think it very right and proper that the Inns of Court should found lectureships; not, however, as an educating body, but in the same way as they might publish books, as contributions towards the general facilities for the study of the law. I think the latter object, too, (that of publishing books) is one to which they might well apply some of the funds and opportunities at their disposal."

We must close with another interrogatory and answer:—

"15. Since you seem to consider that the Inns of Court ought not to interfere in any way with the education of barristers, how can you justify their being maintained in their exclusive privileges of calling to the bar?<sup>b</sup>—I am not the apologist of the Inns of Court, but I must say I think they have their use, quite apart from any educational considerations; or rather I should say that they have their duties, and would have their use if they performed them. The nature of the barrister's employment is such, that although it is perfectly immaterial (as I have said) whether there are ignorant barristers or not, it is most indispensable that there should be no dishonest ones, and that a high tone of gentlemanly and honourable feeling should be kept up in the profession; otherwise the system of advocacy, which is now a benefit to the public and an assistance to the administration of justice, would become an intolerable evil. The office, therefore, of the benchers of the different Inns, as I understand it, is to ascertain that they admit none to the bar whose character for integrity and honour will not bear a tolerably strict investigation; and it is on this principle that the monopoly in question is founded, or, at all events, the only one on which it can now be defended, namely, that the student is for a considerable period, while keeping his terms, under a sort of *surveillance*, both of the benchers and of his future companions and competitors, and that enough of his character may during that time be ascertained to enable the benchers to decide whether he is a fit person to be admitted to the bar or not."

Such is the facetious way in which the learned writer upholds, not the ancient, but the modern practice which prevailed until recently at the Inns of Court. We cannot concur in the conclusions at which he has arrived, but think our readers are entitled to have the main point in the pamphlet before them.

## SHORT NOTICES OF NEW BOOKS.

WE resume our periodical List of New Books, some of which have already been noticed in the present volume, with more or less of detail, according to the nature of the works, and others will be reviewed at the first convenient season.

The Rights and Liabilities of Husband and Wife, at Law and in Equity; as affected by Modern Statutes and Decisions. By John Fraser Macqueen, Esq., of Lincoln's Inn, Barrister-at-Law; author of "The Practice of the House of Lords and Privy Council." Part I. Containing cases not affected by settlement, and the practice upon acknowledgments by Married Women. London: S. Sweet, 1848. pp. xvi. 218, 75.

See a review of this able work, p. 109, *ante*.

Marriage with a Deceased Wife's Sister not forbidden by the law of nature; not dissuaded by expediency; not prohibited by the Scriptures; including an examination of Professor Bush's Notes on Leviticus. By the Rev. J. F. Denham, M.A., F.R.S., Rector of St. Mary-le-Strand, and Lecturer of St. Bride's, Fleet Street. London: Simpkin and Marshall, 1847. p. 69.

The title of this little pamphlet shows the opinion entertained by the Reverend Author on the important question of marriage now before the public, and which has been so frequently discussed both in Parliament and the Courts, and whereon a commission of inquiry has been issued. Mr. Denham has with much learning and ability supported his view of the subject, and his arguments in favour of an alteration of the law, are entitled to great consideration.

A Concise and Practical View of a Chancery Suit, showing its most Important Stages. (Subsequent to the general orders of the 8th of May, 1845.) By W. B. Davies, solicitor. Second edition. London: Owen Richards, 1847.

This is a useful chart of the proceedings in a chancery suit, well adapted for the purpose of reference in a solicitor's office.

Equity Case Reference Table: intended as an aid to "Noting up" the current cases de-

cided in the English Courts of Equity. By a Barrister. London: Charles Reader. 1847.

This is a brief specimen of what industry may effect for the use of the busy practitioner.

An Analytical Digest of Selected Practice Cases, decided in the Common Law Courts, to Trinity Term, 1847; arranged under the several heads of Practice, for the facility of Reference. By Richard Morris, of the Middle Temple, Barrister-at-Law. London: Stevens and Norton. 1847. Pp. 381, lxxxiii.

See a notice of this useful volume, p. 5, *ante*.

Constructive Total Loss. A Report of the Case of *Irving v. Manning*, (in error,) before the House of Lords: with Observations thereon. By George Lathom Browne, Esq., of the Middle Temple, Barrister-at-Law, one of the Counsel in the Case. London: R. Hastings. 1847. Pp. 20.

A well-edited report of this important decision.

A Treatise on the Conflict of Laws of England and Scotland. By John Hosack, of the Middle Temple, Barrister-at-Law.

Part I. containing: I. The Law of Domicile.—II. Legitimacy.—III. Marriage, and its Effects on Property.

Edinburgh and London: Blackwood and Sons.

Considering that the distance between the metropolis of England and that of Scotland is now, in point of time, reduced to a day's journey, a knowledge of the chief differences between the two codes of law will gradually become more and more important. A work, therefore, wherein these diversities are set forth must be of great utility. Mr. Hosack has undertaken this task, and so far as the present volume extends, has efficiently performed it. The next part of the Treatise will comprise the Law of Real and Personal Succession, Contracts, and Bankruptcy.

Manual of the Law of Scotland. By John Hill Burton, Advocate, Author of "A Treatise on the Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland." In two volumes. Second Edition, enlarged. Edinburgh: Oliver and Boyd. London: Simpkin, Marshall, & Co. 1847. Pp. 487, 506.

These concise and well-digested volumes were noticed at p. 24, *ante*.

A History of the Inns of Court and Chancery; with Notices of their Ancient Discipline, Rules, Orders, and Customs, Readings, Moots, Masques, and Entertainments; including an account of the Eminent Men of the Four

Learned and Honourable Societies,—Lincoln's-Inn, the Inner Temple, the Middle Temple, and Gray's Inn, &c. By Robert R. Pearce, Esq., Barrister-at-Law. London: Bentley, Butterworth. 1848. Pp. xi. 440.

Many years having elapsed since the publication of the last edition of Herbert's Antiquities of the Inns of Court, the present work, particularly in reference to the movement regarding Education, is very acceptable and well-timed. Much learned research has been bestowed by Mr. Pearce. The introductory chapter on the early Schools of Law is very interesting; all the important materials in former works have been brought forward, and the history is carried down to the present time.

The Modern Orator, being a collection of Celebrated Speeches of the Most Distinguished Orators of the United Kingdom. Parts I. to IX. London: Aylott and Jones. 1847.

This valuable edition of the best speeches of modern times is proceeding in regular monthly parts. The present series will form the second volume of the work.

The Legal Year Book, Almanack, and Diary, for 1848: comprising a Law Kalendar; the Statutes effecting Alterations in the Law; Standing Orders relating to Private Bills; Members of the Houses of Parliament; New Rules; the Courts, Judges, Commissioners, and Officers; Regulations of the Inns of Court; Precedence of the Bar; Registration and Examination of Attorneys; the Various Law Societies; Stamps; Taxes, Tables, &c. By the Editor of the "Legal Observer." London: A. Maxwell and Son. Pp. 224, 216.

See p. 138, *ante*, where a full statement of the contents of the work will be found.

## SIXTH REPORT OF THE COPYHOLD COMMISSIONERS.

THE following is a COPY of the SIXTH REPORT of the COPYHOLD COMMISSIONERS to HER MAJESTY'S PRINCIPAL SECRETARY of STATE for the HOME DEPARTMENT; pursuant to the Act 4 & 5 VICT. c. 35, s. 3.

[It is a very important document, and will probably lead to an extension of the power of the commissioners. There seems no doubt that at present they are unable to effect the objects for which the act was passed.]

Copyhold Commission,  
24th November, 1847.

SIR,—We have the honour of presenting to you our Sixth Report.

It will be seen, by a reference to the Report

of the Select Committee of the House of Commons on Copyhold Enfranchisement, printed in August, 1838, that the plan of mere voluntary enfranchisement was recommended for a time, and that a more coercive measure was pointed out as alone calculated to meet the wishes and wants of the country.

After more than six years' experience, we have to report that there is a slow and gradual advance in the voluntary enfranchisement of copyholds under ecclesiastical lords.

It seems probable that almost the whole of such copyholds will in time disappear.

It is different, as far as this commission is concerned, with copyholds held under lay lords.

The causes of this fact are to be found partly in the less controlled influence of the stewards—an influence very generally opposed to enfranchisement—and partly in the expectation of both lords and tenants, that some further steps will be taken by the legislature to enforce commutation or enfranchisement.

There is a general indisposition to move till it is known what those steps will be; and if the hopes expressed by the committee of 1838 are to be fulfilled at all, the time seems come when some more efficient measures should be adopted to accelerate the extinction, if not of the copyhold tenure, yet at least of those social and economical evils which are the most distinctly identified with it.

Such measures, if any are taken, will probably establish either—

1st. A general and complete system of compulsory enfranchisement; or,

2ndly. A more limited and gradual system of commutation, by which what is uncertain and mischievous in the copyhold incidents and tenure may be got rid of, leaving the tenure, so amended, as it is.

We do not dwell on the scheme of a complete and compulsory enfranchisement of all the copyhold estates in the kingdom.

We have great doubts if it would be found practicable to pass such a measure.

We have no doubt at all that, if it passed, the difficulties and expense of its application to the whole kingdom, and some serious local difficulties of detail, would be found insuperable obstacles to the completion of this scheme.

With this conviction, we are disposed to recommend, as a more practicable measure and for all economical purposes an equally efficient one, a limited system of compulsory commutation.

We will begin, however, by mentioning a measure even more limited than that we mean ultimately to propose.

*Heriots* form one of those vexatious incidents to copyhold tenure which create a very general feeling of irritation, much greater than their average pressure warrants.

The most valuable picture may be seized as a chattel heriot in respect of a copyhold tenement not worth 10*l*.

In the case of live heriots, race-horses and other valuable animals may be seized under like circumstances.

Instances of the full exercise of such rights, though rare, are not unknown.

To commute these heriots into certain fixed payments, giving the lord full compensation, would be an easy and popular operation.

It would only be necessary to enact that, on application by any tenant, the Copyhold Commissioners should, by such means as to them seem fit, ascertain the value of the lord's right to a live or chattel heriot, and then establish a small fixed payment in its place, assigning to the lord such a sum of money as his abandoned right was worth. So much might be easily done, and it is not probable that a bill to effect this object alone would meet with any opposition.

But this step would only remove a vexation—the substantial economical evils of the copyhold tenure would remain untouched. These consist in *uncertain fines*, which drive capital from improvements on the land, and in rights to timber, and to a control over buildings, which rights are found pernicious.

To get entirely rid of these evils, it would be necessary to change the uncertain fine into a fixed fine, to set a value on the right to timber, and to give the lord, either in money or in a first charge on the estate, a full equivalent for the abandonment of these rights. The tenure might remain untouched, and would then become, we are prepared to show, not only as desirable, but more desirable than the common freehold; always supposing, however, that the steward's fees were fairly but distinctly regulated—a point to which we shall again recur.

Supposing this principle of commuting uncertain incidents adopted, there are at least two very different modes by which it may be carried out.

Each individual tenant may be empowered to call on the commission to commute his uncertain payments, and to assign the lord a consideration.

This plan, which has many recommendations, will be met by one very serious objection.

The lords will complain that, when their solvent and respectable tenants have commuted, they will be left with a bad remnant, constituting a much less desirable tenantry on their manors.

There would be truth in this objection, and it should be met and removed.

To effect this, we would propose that whenever two-thirds in value of the copyholds in any manor were commuted the lords should be entitled to call on the commission for a compulsory commutation of the remainder, which would not, with the experience then acquired, be a difficult operation.

So modified, the compulsory commutation of the uncertain incidents might be carried through, we think, smoothly, and, for all economical purposes, effectually.

The real objections to the tenure would be removed precisely when their pressure was felt, and persons wishing to plant, build, drain, or subsoil plough, might, on securing the lord a fair compensation, go to work as safely and

freely as if their tenure was freehold. There would be no rough and general interference, and the change might proceed silently and almost imperceptibly.

It may be objected that this process would be gradual, and occupy much time; and if this objection is thought serious, then a second and different plan for carrying out the same principle might be adopted. The commission might be empowered and enjoined to take the manors of England *seriatim*, and completely commute all the uncertain incidents in each by turn.

This would be a more rapid operation no doubt; but then it would be rougher and less practically and immediately useful.

Taking all the manors only in their turn, estates on which the pressure of the copyhold incidents was felt as a present obstacle to improvements might come late in the rotation, while other estates where the pressure is not at present felt might be interfered with prematurely.

On the whole, then, we give a decided preference to the plan of allowing the individual tenants to demand a commutation when they wish, securing to the lords, after two-thirds of a manor have been so commuted, a compulsory commutation of the remaining third.

This plan might be carried out without any serious expense to the public. If the parties agreed on the annual value, a short calculation at the office would complete the task of the commissioners.

If the parties could not agree on the annual value, it must be ascertained by some agent of the commission; and the expense of such an estimate might properly be levied, partly on the tenant, partly on the consideration to the lord.

Such an arrangement, besides being just, would be an efficient inducement to lords and tenants to agree voluntarily as to the annual value of the lands to be dealt with.

It may be an objection to this plan, not only that its progress would be slow compared with that of more decisive measures, but would also involve the existence of an indefinite period of some central commission.

It will be recollected, however, that all the expenses, except those of the central commission, will be annually small, exactly in proportion to the slowness with which the country itself carries the measure out.

Care has already been taken that the present Copyhold Commission should expire with the Tithe Commission; and when they come to an end, it will be for the government to consider and determine how, and by what body, the business of superintending the progress of copyhold commutation may thereafter be most economically and efficiently conducted.

There remain one or two points to be noticed:—

The first and most important is, *the fees of stewards*. Were it not for the multiplication of tenements, those fees would not form a pecu-

liarily burthensome charge on the transfer of property.

The system of multiplying tenements, charging for each whole and distinct sets of fees, seems to us an abuse which requires some correction. There does not exist at present any short and efficient mode of resisting unreasonable charges.

Any bill on the subject might contain a provision, that, within months after passing the bill, the Copyhold Commissioners, with the assistance of one of the Taxing Masters of the Court of Chancery, should publish a general list of fees, which, if it is thought fit, might be submitted to parliament, or to the Chancellor, or to the courts at Westminster.

This list once promulgated, a right should be given to the tenants to do what they cannot now do; that is, to submit any charge for fees which they deem excessive to the taxing officers of some of the law courts.

All uncertain incidents commuted, and the fees thus regulated, a copyhold tenure would be not only as good, but even better than a freehold. It would be subject to no appreciable inconvenience from which the freehold is exempt, and would, besides, give a simple form of registration to which the people are already accustomed and reconciled.

In this plan, the lords' right to timber should be one of which the value should be estimated and charged for.

The right to minerals can hardly be valued. It is guarded with great jealousy by the lords, and should be left as it now is; that is, wholly uncommuted, or to be commuted only by voluntary agreements, for the making of which all reasonable powers and facilities should be given to both lords and tenants. It is clear that no third parties can satisfactorily put a value on what is hidden in the bosom of the earth.

There will, probably, be some cases in which the compulsory powers of the commissioners should be modified or restrained.

One whole class, at least, of such cases must be attended to.

When the future improvement of copyhold lands depends on the outlay of the tenant, public policy, we think, demands that his hands should be set entirely free.

But there are cases where a highly improved value will probably be attained without any exertion or outlay on the part of the tenants; such is the case with all grounds likely to acquire value, as building or accommodation lands.

The lords of manors will complain that a compulsory commutation made at once will deprive them of their share of this prospective value.

We think it right to state this, and to say that we see no means of softening the opposition made on this ground, if any should arise, except by giving the commission—first, extensive powers of calculating prospective value; and, secondly, further power in very strong cases of refusing to interfere altogether, and leaving the parties to their voluntary arrangements.

We annex a list of cases which have been completed since our  
We have the honour, &c.,

The Right Hon. Sir G. Grey, Bart., M. P.  
&c. &c. &c.

**COPYHOLD COMMISSION.—Enfranchisements.**

| Manor.                                    | County.        | Lord.  | Nature of Copyholds.      | Incidents of the Manor.                   |
|---|----------------|--|---------------------------|---|
| Langley Marish ....                       | Bucks ..       | Robert Harvey, Esq. ..                                   | Copyhds. of In-heritance. | Fines certain, and quit-rents.            |
| Ely, Barton .....                         | Cambridge ..   | Bishop of Ely ..   | Ditto ..                  | Fines arbitrary and quit-rents.           |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ely, Porta. ....                          | Ditto ..       | Dean and Chapter of Ely.                                 | Ditto ..                  | Ditto ..                                  |
| Kelvedon .....                            | Essex ..       | Bishop of London ..                                      | Ditto ..                  | Ditto ..                                  |
| Milton Hall .....                         | Ditto ..       | D. R. Scrutton, Esq. ..                                  | Ditto ..                  | Ditto ..                                  |
| Caddington .....                          | Herts ..       | Dean and Chapter of St. Paul's ..                        | Ditto ..                  | Ditto ..                                  |
| Pauls Walden .....                        | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Thoresby, North, cum North Coats          | Lincoln ..     | Earl of Yarborough ..                                    | Ditto ..                  | Fines certain, and quit-rents.            |
| Acton .....                               | Middlesex ..   | Bishop of London ..                                      | Ditto ..                  | Ditto ..                                  |
| Barnsbury .....                           | Ditto ..       | Henry Tufuell, Esquire                                   | Ditto ..                  | Fines arbitrary, & quit-rents.            |
| Fulham .....                              | Ditto ..       | Bishop of London ..                                      | Ditto ..                  | Fines certain, and quit-rents.            |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Hackney, commonly called the Lord's Hold. | Ditto ..       | William George Tyssen, Daniel Tyssen, Esq.               | Ditto ..                  | Ditto ..                                  |
| Hanwell ..                                | Ditto ..       | Bishop of London ..                                      | Ditto ..                  | Fines arbitrary, & quit-rents.            |
| Isleworth, Rectory of                     | Ditto ..       | Dean and Canons of Windsor                               | Ditto ..                  | Fines certain, and quit-rents.            |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Islington, Prebend of                     | Ditto ..       | Prebendary of Islington and Ecclesiastical Commissioners | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Paddington .....                          | Ditto ..       | Bishop of London ..                                      | Ditto ..                  | Ditto ..                                  |
| Wereham Hall .....                        | Norfolk ..     | Philip Sewell, William Sewell, and Thomas Nash, Esqs.    | Ditto ..                  | Fines arbitrary, & quit-rents.            |
| Headington .....                          | Oxford ..      | Rev. Thos. Henry Whorwood                                | Ditto ..                  | Fines arbitrary, heriots, and quit-rents. |
| Bleadon with Priddie                      | Somerset ..    | Dean and Chapter of Winchester                           | Copyholds for 3 lives.    | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Barton-with-Buddlesgate.                  | Southampton .. | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Ditto ..                                  |
| Crondall .....                            | Ditto ..       | Ditto ..   | Copyhold heritan          | Fines certain, and quit-rents.            |
| Ditto .....                               | Ditto ..       | Ditto ..   | Ditto ..                  | Fines certain, heriots, and quit-rents    |
| Ealing .....                              | Ditto ..       | Warden and Scholars of St. Mary's College, Winchester    | Ditto ..                  | Fines arbitrary, & quit-rents             |
| Manydown .....                            | Ditto ..       | Dean and Chapter of Winchester                           | Copyholds for 3 lives     | Fines arbitrary, heriots, and quit-rents. |

last report, or which are now in an advanced state.

WM. BLAMIRE,  
T. WENTWORTH BULLER.  
RD. JONES.

### COPYHOLD COMMISSION.—*Enfranchisements.*

| Terms for Enfranchisement.   | Progress made in Enfranchisement.    |
|--|--------------------------------------|
| Four years' annual value .. .. .   | Signed and sealed.                   |
| Six years' annual value .. .. .  | Ditto.                               |
| Five and a-half years' annual value .. .. .  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| Five years' annual value .. .. .   | Ditto.                               |
| Six years' annual value .. .. .  | Draft received.                      |
| Five years' annual value ; quit-rents 30 years .. .. .   | Signed and sealed.                   |
| Ditto .. .. .  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| The consideration was a mere nominal sum, the ground being required for a chapel.  | Ditto.                               |
| One year's annual value ; quit-rents 30 years .. .. .  | Ditto.                               |
| One-sixth part of the value of the property was taken for the consideration, a private Act having been previously passed, reducing the fine on ground intended to be built upon to one-third of the annual value of the building erected | Ditto.                               |
| One year's annual value ; quit-rents 30 years .. .. .  | Ditto.                               |
| One year's annual value ; quit-rents 32 years ; chief rent 32 years .. .. .  | Ditto.                               |
| One year's annual value ; quit-rents 30 years .. .. .  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| One year's annual value ; quit-rents 28 years ; freehold rent 28 years   | Ditto.                               |
| One-fourth of the annual value of land as applicable to building purposes.   | Ditto.                               |
| Five years' annual value .. .. .   | Ditto.                               |
| One year's annual value .. .. .  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| One-twelfth of the land enfranchised, two years' annual value of the ground-rents on houses enfranchised ; quit-rents twenty-five years  | Ditto.                               |
| Ditto .. .. .  | Ditto.                               |
| One year's annual value ; quit-rents 32 years .. .. .  | Ditto.                               |
| Four absolute fines ; quit-rents 30 years.   | Ditto.                               |
| .. .. .  | ..                                   |
| .. .. .  | ..                                   |
| Rent charge about one-fifth of annual value .. .. .  | Schedule of apportionment confirmed. |
| Four years' annual value .. .. .   | Signed and sealed.                   |
| Rent charge about one-fifth of annual value .. .. .  | Draft received.                      |
| .. .. .  | Signed and sealed.                   |
| Land five years' annual value ; tenement, two years' annual value  | Ditto.                               |
| Rent charge about one-third of annual value .. .. .  | Ditto.                               |
| Rent charge about one-fourth of annual value .. .. .   | Ditto.                               |
| One year's annual value ; quit-rents 28 years .. .. .  | Ditto.                               |
| One and a half year's annual value .. .. .   | Ditto.                               |
| .. .. .  | ..                                   |
| .. .. .  | Draft received.                      |
| Rent charge about one-fourth of annual value .. .. .   | Signed and sealed.                   |

| Manor.            | County.        | Lord.   | Nature of Copyholds.      | Incidents of the Manor.                   |
|-------------------|----------------|---|---------------------------|---|
| Manydown ..       | Southampton .. | Dean and Chapter of Winchester                                  | Copyholds for 3 lives.    | Fines arbitrary, heriots, and quit-rents. |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Whitburch .....   | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Wonston .....     | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Barnes .....      | Surrey ..      | Dean and Chapter of St. Paul's                                  | Copyholds of Inheritance. | Fines arbitrary, & quit-rents.            |
| Croydon .....     | Ditto ..       | Achbishop of Canter-bury  | Ditto ..                  | Fines arbitrary, heriots, and quit-rents. |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Epsom .....       | Ditto ..       | John Ivatt Briscoe, Esq. & Anna Maria his wife.                 | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Dotit ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Lambeth .....     | Ditto ..       | Archbishop of Canter-bury                                       | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Reigate .....     | Ditto ..       | Earl Somers ..  | Ditto ..                  | Ditto ..                                  |
| Figheledeau ..... | Wilts ..       | Bishop of Salisbury and Edward Dyke Poore, Esq., Lord Farmer .. | Copyholds for 3 lives     | Ditto ..                                  |
| Ham .....         | Ditto ..       | Dean and Chapter of Winchester                                  | Ditto ..                  | Ditto ..                                  |
| Hinton .....      | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Wroughton .....   | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Ditto .....       | Ditto ..       | Ditto ..  | Ditto ..                  | Ditto ..                                  |
| Hallow .....      | Worcester      | Bishop of Worcester   | Copyholds for 4 lives.    | Ditto ..                                  |

## CANDIDATES WHO PASSED THE EXAMINATION.

Michaelmas Term, 1847.

| Names of Candidates.       | To whom Articled, Assigned, &c.   |
|----------------------------|---|
| Abrahams, Michael ..       | Samuel Abrahams, 4, Lincoln's-inn-fields                                |
| Alcock, Joseph Locker ..   | Thomas Bisgood, 36, Carey-street; Wm. Carr Foster, 28, John Bedford-row |
| Alderson, Philip Robert .. | James Sparke, Bury St. Edmunds; George Burrow Gregory, Bedford-row      |
| Allan, Edward ..           | John Lawford, Drapers'-hall   |
| Andrews, Edward ..         | George Andrews, Weymouth, and Melcombe Regis                            |
| Arnold, George Matthews .. | George Easell, Rochester  |
| Axford, John ..            | Frederick Pain Axford, 16, Cornhill                                     |
| Baker, Isaac Palmer ..     | Simon Batley Jackaman, Ipswich  |
| Barnes, Edward Samuel ..   | Robert Davies, Wells  |

| Terms for Enfranchisement.   | Progress made in Enfranchisement. |
|--|-----------------------------------|
| Rent-charge about one-fourth of annual value .. .. .   | Signed and sealed.                |
| One and a-half year's annual value .. .. .   | Ditto.                            |
| Rent charge about one-fourth of annual value .. .. .   | Ditto.                            |
| Rent charge about one-fifth of annual value .. .. .  | Draft received.                   |
| Four years' annual value .. .. .   | Signed and sealed.                |
| Rent charge about one-fifth of annual value .. .. .  | Ditto.                            |
| Rent charge about one-fourth of annual value .. .. .   | Ditto.                            |
| Rent charge about one-fifth of annual value .. .. .  | Ditto.                            |
| Ditto .. .. .  | Ditto.                            |
| Ditto .. .. .  | Ditto.                            |
| One and three-quarter years' annual value; quit rents 28 years                               | Draft received.                   |
| Rent charge about one-fourth of annual value .. .. .   | Signed and sealed.                |
| Land five years' annual value; tenement two years' annual value                              | Ditto.                            |
| Five years' annual value, quit rents 30 years .. .. .  | Ditto.                            |
| Three and a-half years' annual value; 10 heriots 110 <i>l.</i> ; quit-rent 32 years          | Ditto.                            |
| Three and a-half years' annual value; quit rents 32 years .. .. .                            | Ditto.                            |
| Five years' annual value, quit rents 30 years .. .. .  | Ditto.                            |
| Five years' annual value; heriots 9 <i>l.</i> 17 <i>s.</i> 6 <i>d.</i> ; quit-rents 30 years | Ditto.                            |
| Five years' annual value .. .. .   | Ditto.                            |
| Five years' annual value; heriots 10 <i>l.</i> ; quit-rents 28 years .. .. .                 | Ditto.                            |
| Five years' annual value, including 10 <i>l.</i> for heriots .. .. .                         | Ditto.                            |
| Six years' annual value; quit rents 25 years .. .. .   | Ditto.                            |
| Six years' annual value; quit rents 30 years .. .. .   | Ditto.                            |
| Five and a-half years' annual value .. .. .  | Draft received.                   |
| Three and a half years' annual value; 7 heriots at 5 <i>l.</i> each; quit-rents 28 years     | Signed and sealed.                |
| Three and a-half years' annual value; heriots 20 <i>l.</i> ; quit-rents 30 years             | Ditto.                            |
| Three and a-half years' annual value; heriots 10 <i>l.</i> ; quit rents 32 years             | Ditto.                            |
| Three and a-half years' annual value; 2 heriots 40 <i>l.</i> ; quit-rents 32 years           | Ditto.                            |
| Three and a-half years' annual value; 7 heriots at 140 <i>l.</i> ; quit-rents 32 years       | Ditto.                            |
| Three and a-half years' annual value; one heriots at 10 <i>l.</i> ; quit rents 30 years      | Ditto.                            |
| Five and a-half years' annual value; two heriots at 31 <i>l.</i> 10 <i>s.</i> each           | Ditto.                            |
| About one-sixth of the land enfranchised .. .. .   | Ditto.                            |
| Rent charge about one-fifth of annual value .. .. .  | Draft received.                   |
| Rent charge about two-ninths annual value .. .. .  | Ditto.                            |
| Rent charge about one-fifth of annual value .. .. .  | Signed and sealed.                |
| Ditto .. .. .  | Draft received.                   |
| Rent charge about one-fourth of annual value .. .. .   | Ditto.                            |
| Rent charge about one-fifth of annual value .. .. .  | Ditto.                            |
| Rent charge about one-eighth of annual value .. .. .   | Signed and sealed.                |

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| Barron, Edward Jackson . . . . .   | Wm. Henry Cullen, Canterbury; Edward Barron, Bloomsbury square; William Briscoe, Bath. |
| Barrow, James . . . . .            | James Partington Aston, Manchester   |
| Beattie, James . . . . .           | Henry George Robinson, 6, Half-moon-street, Piccadilly                                 |
| Bell, James . . . . .              | James Blair, Uttoxeter; Charles Marston Stretton, 18, Southampton-buildings            |
| Bolton, John . . . . .             | John Hargreaves, Blackburn; Francis James Ridsdale, Gray's-inn                         |
| Brandon, Gabriel Samuel . . . . .  | Henry Vallance, 20, Essex-street, Strand   |
| Briggs, Frederick . . . . .        | William Francis Low, Wimpole-street; Montague Shearman, John-street, Adelphi           |
| Briggs, John Hall Newton . . . . . | John Huish, Derby; Wm. Hallows, 39, Bedford-row  |
| Bromet, John Addinell . . . . .    | Richard Baillie, Tadcaster   |
| Buswell, William . . . . .         | Alfred Paget, Leicester  |
| Carr, William James . . . . .      | John Ridehalgh, Ripponden  |
| Cater, James, jun. . . . .         | Thomas Hustwick, Soham   |
| Champion, Charles . . . . .        | David Jennings, 71, Whitechapel-road   |
| Cheesman, John Goodger . . . . .   | George Dempster, Brighton; Charles Chalk, Brighton                                     |



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| Ching, William John . . .        | George Harding, Great Russell-street, Bloomsbury   |
| Clarke, William . . .            | Charles Carter, Barnstaple   |
| Clay, Charles, jun. . . .        | Richard Green and Thomas Peters, Knighton  |
| Cockcroft, Lonsdale Maving . . . | William Chartres, Newcastle-upon-Tyne  |
| Collins, William, jun. . . .     | John Henry Todd, Winchester  |
| Congreve, John . . . .           | Godfrey Tallents, Newark-upon-Trent  |
| Cotterill, James Hardman . . .   | William Henry Cotterill, Throgmorton-street  |
| Day, Henry . . . . .             | Frederick Day, Hemel Hempstead   |
| De Mole, John Stephen . . .      | John Bamber de Mole, Merchant Tailors'-hall, Throgmorton-street ;<br>Thomas Browning, Threadneedle-street                            |
| Dewes, William Pettit . . .      | William Dewes, Ashby-de-la-Zouch   |
| Dixon, George . . . . .          | Thomas Henry Dixon, 5, New Boswell-court   |
| Dickson, William, jun. . . .     | William Dickson, sen., Alnwick   |
| Duffy, Richard Arthur . . .      | John Fox, Nottingham   |
| Duncalfe, John Thomas . . .      | William, Thomas, jun., Walsall   |
| Falconar, John Brunton, jun. .   | John Fenwick, Newcastle-upon-Tyne  |
| Fellowes, John Butler . . .      | Nicholas Lockyer, Plymouth   |
| Fisher, Edward Freeland . . .    | Richard Almack, Melford ; Charles Fletcher Skirrow, Bedford-row  |
| Ford, Brutton John . . . .       | Henry Melhuish Ford, late of Exeter ; John Mitchell, Wymondham<br>and Exeter   |
| Fullagar, Walter Horne . . .     | John Edward Fullagar, Lewes  |
| Fuller, Frederick . . . . .      | John Physick, 3, Northumberland-buildings, Bath  |
| Godwin, Alfred . . . . .         | Charles Bailey, Winchester   |
| Gramshaw, Robert . . . . .       | William Freer, Leicester   |
| Haigh, John . . . . .            | William Haigh, Huddersfield  |
| Hale, James . . . . .            | Edward Bousfield, 12, Chatham-place, Blackfriars, and afterwards of<br>Guildhall-buildings, City                                     |
| Hamilton, Thomas William . .     | Keith Barnes, Spring-gardens   |
| Hare, Richard . . . . .          | John Henning, Weymouth, and Melcombe Regis   |
| Harvey, Joseph . . . . .         | Alfred Paget, Leicester  |
| Harvey, Thomas Morton . . .      | Thomas Harvey, Egham   |
| Headley, Tanfield George . .     | Robert William Peake, 11, New Palace-yard  |
| Henderson, James . . . . .       | John Wilkinson, Clithero ; James Baldwin, late of Colne, Dixon<br>Robinson, Blackburn and Clithero Castle                            |
| Hollinshead, Henry Brock . .     | Oswald Milne, jun., Manchester ; James Ainsworth, Blackburn  |
| Holt, Joseph Pierson . . . .     | Thomas Fowle, Northallerton  |
| Janeway, William . . . . .       | John James Joseph Sudlow, Chancery-lane  |
| Indermaur, John . . . . .        | Edmund Sharp, 2, Devonshire-terrace, St. Marylebone  |
| Knapp, Richard . . . . .         | Benjamin Holloway, New Woodstock ; Frederick Patey Chappell,<br>then of Quality-court, now of 25, Golden-square                      |
| Lanfair, William Burbidge . .    | Henry Rivington Hill, 23, Throgmorton-street   |
| Latch, George . . . . .          | Stephen Towgood, Newport   |
| Lewis, Lauriston Winterbotham    | Lindsey Winterbotham, late of Tewkesbury ; Joshua Thomas, Tewkes-<br>bury, & further assigned to John Brend Winterbotham, Cheltenham |
| Marlow, Thomas . . . . .         | John Forster, Walsall  |
| Meggison, Robert Graham . .      | James Russell, York  |
| Micklem, Thomas . . . . .        | John Weedon, Reading ; Henry Darvill, New Windsor  |
| Miller, William . . . . .        | Richard Bohun, and Samuel Wilson Rix, Beccles  |
| Milner, Dennis . . . . .         | John Fitchett Marsh, Warrington  |
| Ottaway, Philip Watson . . .     | Gillett Jonathan Ottaway, Staplehurst  |
| Owen, Owen . . . . .             | Thomas Ellis, Pwllheli   |
| Oxley, John, jun. . . . .        | John Oxley, Rotherham  |
| Parker, Richard . . . . .        | Robert Parker, Axbridge ; John Willmott Bradford, Langford, and<br>re-assigned to Robert Parker                                      |
| Penberthy, Henry, jun. . . .     | George Pridham, Plymouth   |
| Pickop, William . . . . .        | Henry Hargreaves, Blackburn ; Charles R. Craddock, Gray's-inn  |
| Pollard, George Octavius . . .   | Powell & Co., 9, New-square, Lincoln's-inn   |
| Pratt, John Forster . . . .      | Robert Weddell, Berwick-upon-Tweed   |
| Prescott, George William . .     | Rowland Price, Stourbridge   |
| Raven, John . . . . .            | John Slater, Hawkshead   |
| Reynolds, William Collett . .    | Charles John Palmer, Great Yarmouth  |
| Rogers, Walter Goddard . . .     | Charles Long, Southampton  |
| Rouse, James . . . . .           | Charles Ranken, 4, South-square  |
| Rowlands, Edward Richard . .     | Thomas Barneby, Worcester  |
| Roy, W. Gascoigne . . . . .      | Richard Roy, 42, Lothbury, and 37, Great George-street   |
| Scoones, Francis . . . . .       | Scoones and Alleyne, Tonbridge   |
| Scott, Henry . . . . .           | John Cole, late of Odiham ; George Lamb, Odiham  |
| Seymour, Hugh Callan . . . .     | John Physick, Bath   |
| Shaw, Henry . . . . .            | George Shaw, Billerica   |
| Shekell, Thomas Stevens . .      | Edwin Balf, Pershore   |
| Smith, Albert . . . . .          | John Smith, Devonport  |
| Smith, William Ackers . . . .    | George Hiddyard, 8, Farnival's-inn   |
| Symes, Charles Pitman . . . .    | Henry Heathcote Statham and Francis Horner, Liverpool  |
| Templeman, John Marsh, jun.      | John Marsh Templeman, sen., Crewkerne  |

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| Thornton, George . . . .               | William Wells, Bradford  |
| Tippetts, James Berriman, jun. . .     | James Berriman Tippetts, sen., 6, Pancras-lane   |
| Trollope, William Mann . . . .         | James and Charles Rogers, 22, Manchester-buildings, Westminster  |
| Underhill, Henry . . . .               | Edward Bennett, Wolverhampton  |
| Upward, Walter . . . .                 | Samuel White Sweet, Basinghall-street; George Frederick Prince Sutton, Basinghall-street                                       |
| Wallingford, Edward Alfred . . . .     | George Game Day, St. Ives  |
| Waring, Thomas . . . .                 | John Francis Bellwood Fry, Ruthin; Edward Hugh Edwards, 11, New Palace-yard, and further assigned to T. Kirk, 10, Symonds'-inn |
| Watts, George Augustus Everitt . . . . | Charles Henry Turner, Exeter   |
| Whiteman, Alfred . . . .               | Reuben Terwest, Eastbourne   |
| Wilson, Richard . . . .                | John Shackleton, Leeds   |
| Wilson, Robert, jun. . . .             | James Call Waddell, Berwick-upon-Tweed   |
| Woolcott, John . . . .                 | Henry Rowden, Wimborne Minster   |
| Young, Horace . . . .                  | John Young, 6, Sise-lane; Joseph Whitehouse, 36, Lincoln's-inn-fields  |

## THE NEW MASTER IN CHANCERY. FIRE OCCASIONED BY NEGLIGENCE.

THE vacancy in the office of one of the Masters of the Court of Chancery, occasioned by the death of Mr. Duckworth, has been filled by the appointment of *William H. Tinney, Esq., Q. C.* We thought the emoluments and easy duty would not long be neglected. The learned gentleman was called to the Bar by the Honourable Society of Lincoln's Inn, on Nov. 22, 1811. In order of seniority he ranked after Lord Campbell and Mr. Selwyn, and before the Right Hon. Mr. Pemberton Leigh and Vice-Chancellor Knight Bruce.

This appointment is an exception to the usual adherence to party claims; but as a Law Lord said on another occasion, "blood is thicker than water!"

### ANNUAL REGISTRATION OF ATTORNEYS.

THURSDAY the 16th instant was the last day for paying the annual certificate duty of attorneys, in order that such certificates should relate back to the 16th November, and enable the attorney to recover his costs in the interval, and to free him from the liability to penalties for practising without a certificate.

It may be material to mention, however, that although certificates taken after the 16th will bear date on the day of payment, the names of the parties will appear in next year's Law List, if obtained on or before the 31st instant.

For this purpose the declarations should be lodged at the Incorporated Law Society on Friday the 24th (the next day being Christmas-day). The Registrar affords every accommodation in his power, but unfortunately there are so many who leave this important business to the last day, that there may not be time to complete the certificates. The first in order must be first served.

### PENALTY ON SERVANTS.

There can be no doubt that nineteen out of every twenty fires are occasioned by negligence or carelessness. It may not be without its use to set forth the penalties inflicted on servants who are guilty of acts of negligence by which losses are thus sustained."

"Whereas fires often happen by the negligence and carelessness of servants, be it therefore enacted, That if any menial, or other servant, or servants, through negligence or carelessness, shall fire, or cause to be fired, any dwelling-house or out-house, or houses or other buildings, within the Kingdom of Great Britain, such servant or servants being thereof lawfully convicted by the oath of one or more credible witness or witnesses, made before two or more of his majesty's justices of the peace, shall forfeit and pay the sum of one hundred pounds, unto the churchwardens or overseers of such parish where such fire shall happen; to be distributed amongst the sufferers by such fire, in such proportions as to the said churchwardens shall seem just: and in case of default or refusal to pay the same immediately after such conviction, the same being lawfully demanded by the said churchwardens, that then, and in such case, such servant or servants shall, by warrant under the hands and seals of two or more of his majesty's justices of the peace, be committed to the Common Gaol, or House of Correction, as the said justices think fit, for the space of eighteen months, there to be kept to hard labour." 14 Geo. 3, c. 78, s. 84.

### PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

#### House of Lords.

#### NEW BILLS.

Railways. For 3rd reading.

\* A notice of this enactment is given by the active London manager of the West of England Insurance Office, and we recommend the other offices to follow the example. ED.

## House of Commons.

## NEW BILLS.

Roman Catholic Charitable Trusts.—Mr. Anstey.

Roman Catholic Relief.—Mr. Anstey.

Agricultural Tenant Right in England and Wales.—Mr. Pusey.

Altering Epiphany Quarter Sessions.—Mr. Packe.

## NOTICES OF NEW BILLS.

Administration of Poor Law.—Mr. Bankes.

Appeal in Criminal Cases.—Mr. Ewart.

Practice and Costs of Solicitors in the Metropolitan Police Courts.—Mr. C. Pearson.

Acquittal of Insane Prisoners.—Mr. C. Pearson.

Trial of Prisoners without Grand Jury.—Mr. C. Pearson.

Employment of Convicts.—Mr. C. Pearson.

Juvenile Offenders. Mr. C. Pearson.

## TAXES ON THE ADMINISTRATION OF JUSTICE.

Returns have been moved for by Mr. Aglionby of the respective ages of the Clerk of Enrolments, and of the Four Clerks of Records and Writs of the High Court of Chancery in England, and also of the total amount received by each of them, such Clerk of Enrolments and Clerks of Records and Writs, since the passing of the act 5 & 6 Vict. c. 103, both for salary and compensation under that act; and also of the total amount of compensation received by any of the before-mentioned officers

under any other act or acts of parliament, as late an Examiner, or late Clerk to an Examiner of the said court; or otherwise in any other character, and paid out of any funds of the suitors of the said court; and also, of the total amount received by any of the said officers as poundage, or in respect of the income, or any other tax imposed upon payments made out of any of such funds, distinguishing the sums received by each such person on each of such accounts, and giving his name:

And of the names and respective ages of the late Six Clerks, who are still living and entitled to compensation under the aforesaid act of the 5 & 6 Vict. c. 103, with the amount of the compensation to each of them.

Also, returns of the number of attendable warrants granted by each of the Taxing Masters and late Taxing Masters of the Court of Chancery for the taxation of costs, each day, within the 5th year of his appointment; distinguishing the warrants to justify attendances, and the number of Bills of Costs, and the amount and rate of the percentage on the taxation thereof paid thereon during that year, and the sums received by him for warrants granted, and for copies of Bills of Costs, and for Reports or Certificates, or otherwise, during that period:

And of the total amount of the sums received by each of the Taxing Masters and late Taxing Masters of the Court of Chancery, (paid out of the Suitors' Fee Fund,) both for salary and compensation, since the passing of the act 5 & 6 Vict. c. 103, distinguishing the sums paid to each person, and the names of the persons.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*In re Dolman.* Nov. 4, 1847.

## PETITION.—SECURITY FOR COSTS.

*The rule which requires a party resident out of the jurisdiction to give security for costs applies to a petition as well as to a bill.*

This was a petition on the face of which it appeared that the petitioner was out of the jurisdiction. On this circumstance being urged as a ground for the petitioner being ordered to find security for costs,

Mr. Goodeve, for the petition, said, that he was not aware that the rule of requiring security for costs applied to a petition, and referred to *Anon.*, 12 Sim. 262.

Lord Langdale expressed his opinion, that the same rule applied to a petition as to a bill; and the petition was accordingly ordered to stand over that the petitioner might find security for costs.

*Manners v. Furze.* Nov. 11 & 23, 1847.

## RECEIVER.—SECURITY.—GUARANTEE ASSOCIATION.

*The court cannot accept the bond of a guarantee association as a security for a receiver, though with the consent of all parties to the cause.*

*The court will not appoint a receiver without security, even though without salary.*

In this case Mr. Chaadless moved to appoint A. B. receiver with the consent of all the parties to the cause, they being all *sui juris*, on his giving as a security a bond by the British Guarantee Association; a society incorporated by an act of parliament, one clause of which authorizes such securities to be taken in the government offices. The Master had approved of the security proposed, if the rules of practice of the court would allow of its being taken. But there was this difficulty, that the ordinary practice of the court required the security to be made by way of recognizance, to enter into which it was necessary for the surety personally to appear before the proper officer; and this a corporation aggregate could not do.

Lord Langdale said, that he had no authority to alter the practice of the court; what process would the petty bag have to enforce the security? The parties, if *sui juris*, might consent to take no recognizance; but he could not sanction the practice as that of the court.

In consequence of this expression of his lordship's opinion, Mr. Chandless, on a subsequent day, applied for the appointment of the same person as receiver, without salary or security, but

Lord Langdale again declined to make the order; observing, that although the court would, with the consent of the person appointed, appoint a receiver without salary, this circumstance did not affect the rule for requiring security before the court would lend to the receiver its authority.

### Vice-Chancellor of England.

*Jarvis v. Cardale.* Dec. 11, 1847.

#### VESTING OF LEGACY.—ACCUMULATIONS.

*Bequest of testator's residuary estate on trust to convert and pay unto equally between and among his great-grandchildren at 25, or otherwise apply the same for their use and benefit as his executors should think proper: Held, void for remoteness. Similar clauses in two deeds confirmed by the will: Held, void for the same reason.*

THIS was a suit instituted by the trustees of two indentures of settlement and of a will of Thomas Wardale, for the purpose of obtaining the opinion of the court as to the validity of certain limitations contained therein. By the indentures, bearing date the 1st of March, 1823, Thomas Wardale assigned the sums of 600*l.* and 700*l.* to the plaintiffs, upon trust to pay the interest and dividends to certain persons for life, and after their decease, "upon trust that they should stand possessed of and interested in the interest money to accrue and become due from time to time in respect of the said principal sums until such time as all and every the child and children of John Wardale (the grandson of Thomas Wardale) should respectively attain the age of 25 years, so and in such manner as the said interest money might accumulate and be added to the principal for their several and respective use and benefit, and then upon trust that they and the survivor of them, his executors and administrators, should, upon such child or children respectively attaining the age of 25 years, as therein mentioned, pay, divide, and distribute the said sums and all accumulating interest thereof in the meantime unto and among such children at the respective ages aforesaid, in the shares and proportions thereafter mentioned, that was to say, unto and amongst such of them as were males one-third part more than the females; and in case any one of the children should depart this life before their shares became payable, leaving lawful issue, then the share and shares of them so dying of and in the monies therein mentioned should be paid and equally divided

unto and amongst his, her, or their lawful issue, as thereinbefore mentioned." Thomas Wardale, (the settlor,) by his will bearing date the 8th of March, 1823, expressly ratified and confirmed these two indentures, and appointed plaintiffs the executors and trustees of his will, giving and bequeathing to them "all his ready monies and monies out at interest, bills, bonds, and securities for money, and all other his personal estate and effects of every kind, upon trust that they and the survivor of them, his executors and administrators, should, as conveniently could be after his decease, call in and sell, dispose, and convert into money such part of his personal estate and effects as should not consist of money as they should think proper, and the monies arising therefrom, should pay and apply in satisfaction of his debts, funeral, and testamentary expenses, and other incidental charges, and the remainder, if any, should pay unto and equally between and among all and every his great-grandchildren, the children of his grandson John Wardale by Mary his then wife, at their several and respective ages of 25 years, or otherwise apply the same for their use and benefit as they his executors should think proper."

Mr. Malins for John Wardale, the legal personal representative of Thomas Wardale, who was the son and sole next of kin of Thomas Wardale the settlor, contended, that the clauses in the deeds and the residuary bequest in the will were void for remoteness, and that John Wardale was therefore entitled.

Mr. Chandless, for the great grandchildren of the settlor, who were living at his death and attained 25, contended, that they took vested estates, and that the postponement to 25 was only as a more convenient time for payment. *Vivian v. Mills*, 1 Beav. 315; *Saunders v. Vautier*, 1 Craig. & Phil. 240.

Mr. Wright and Mr. Surrage appeared for other parties.

The Vice-Chancellor said, it appeared to him that the deeds which were recited in the will tended to throw a light on the will. The same construction ought to be put on both, and the same set of takers should take if they could. He was of opinion that the testator had contrived to point out that the takers were to be not only his great-grandchildren, but those of his great-grandchildren who attained the age of 25 years; that being so, the principal acted on by Sir W. Grant in *Longdon v. Simson* applied, that where a gift to a class was in such a way that some of the class had a capacity to take, yet that capacity might be destroyed by others of the class not being capable of taking. His opinion was, that the limitations in the present case were void, and that the next of kin of the testator took.

*Balcarres v. Hudson.* Dec. 9, 1847.

#### NOTICE OF MOTION.—COSTS.

*Where two defendants appear by the same solicitor, and two notices of motion are served on their behalf on the same day to*

*dismiss the bill for want of prosecution, the costs of one motion only will be allowed.*

In this case Mr. Smythe moved in behalf of two defendants to a bill, that the bill might be dismissed for want of prosecution. Both the defendants appeared by the same solicitor, and notwithstanding this, two separate notices of motion were served for the same day.

Mr. Bethell objected to the allowance of the costs of more than one motion, stating that a case had occurred in the court before, where it had been so decided.

The Vice-Chancellor said, the costs of one motion only could be allowed.

**Vice-Chancellor Knight Bruce.**

*May v. Prinsep.* Thursday, Nov. 11, 1847.

**PRACTICE.—AFFIDAVIT.—VARIANCE.**

*The affidavit of service of a copy of the bill must not vary from the title of the bill by the omission of a name of a defendant, unless the omission is supplied by the words "or others."*

Mr. W. T. S. Daniel moved in this case for leave to enter a memorandum of service of a copy of the bill upon Gardiner, one of the defendants in the suit. He stated that there appeared to be a defect in the affidavit of service by the omission of the name of this defendant, and no words were inserted to show that there was any one more than the defendants whose names were stated. The affidavit was headed,—"Between George William May, plaintiff, and Mary Thoby Prinsep, Henry Vincent Bayley, defendants;" but no mention was made of Gardiner, the words "and — Gardiner" having been omitted; nor were the words "and others," or "and another," added.

*His Honour.* The affidavit is not, in my opinion, sufficient.

*Higginson v. Wilson.* Thursday, Nov. 11, 1847.

**PRACTICE.—FEME COVERT.—PLEA.**

*Where a feme covert was sued as a feme sole, and had entered an appearance, it is necessary to go to the courts for an order to put in a plea of her coverture, without joining her husband in the plea.*

Sarah Phillips, a married woman, was made a defendant to the suit under her maiden name, Sarah Fagg. An appearance was entered in her right name of Sarah Phillips, and wishing to put in a plea of her coverture, application was made to Mr. Berry, the Clerk of Records and Writs, who refused to allow the filing of the plea without an order made by the court.

Mr. Alnutt now applied to the court for leave to file the plea.

*His Honour.* I do not think any order is necessary, but, if asked, I will make it.

The Clerk of Records and Writs said, he had consulted the Master of the Rolls on the point, and his Lordship was of opinion that an order of the court was necessary.

Order made.

**Queen's Bench.**

(Before the Four Judges.)

*Simpson v. Margitson.* Michaelmas Term, 1847.

**AGREEMENT.—CALENDAR OR LUNAR MONTH.—EVIDENCE.**

*In an agreement for the sale of an estate, one per cent was agreed to be paid if the sale was completed within two months, but only one-half per cent. if not completed within that period. The sale took place within two calendar months, but not within two lunar months.*

*Held, that the word month, unless qualified, must be taken to denote lunar month, but that evidence is admissible to show that in the auction trade month means calendar, and not lunar month.*

*The interpretation of a contract is matter for a judge, but where it is doubtful whether a particular word is used in a sense different from its ordinary meaning, the judge should leave it to the jury to say what sense in that trade ought to be given to the word.*

THIS was an action brought by the plaintiff, an auctioneer, against the defendant for commission for the sale of an estate. The plaintiff claimed the sum of 200*l.* The agreement between the parties was, that the plaintiff was to have one per cent. if the estate should be sold within two months, and one-half per cent. if sold after two months. The property was sold after the expiration of two lunar months, and before the expiration of two calendar months. Evidence was tendered by the plaintiff for the purpose of showing that, according to the usage of this particular business, the word month meant calendar month, but, the learned judge being of opinion that the evidence was not admissible, it was withdrawn.

This case was tried before Wightman, J., and the meaning of the word month was left for the decision of the jury, and it was found to mean calendar month. The conditions of sale and some letters written by the defendant to the plaintiff were given in evidence to show that the meaning of the parties was calendar months. A rule nisi was afterwards obtained to enter a nonsuit, or for a new trial.

Mr. Serjeant Byles and Mr. Unthank showed cause. Parol evidence is admissible for the purpose of explaining the meaning of the word month, according to the usage of that particular trade, as in *Smith v. Wilson*,<sup>a</sup> evidence was admitted to show that the words "a thousand rabbits" in a lease denoted twelve hundred. The meaning of this expression was properly left for the consideration of the jury. In *Hutchinson v. Bowker*,<sup>b</sup> Parke, B., lays down the rule:—"The law I take to be this,—that it is the duty of the court to construe all written instruments; if there are peculiar expressions used in it, which have in particular places or trades a known meaning attached to them, it is for the jury to say what the meaning of those

<sup>a</sup> 3 B. & Ad. 728. <sup>b</sup> 5 Mee. & Wels. 535.

expressions was, but for the court to decide what the meaning of the contract was." In *Jolly v. Young*,<sup>c</sup> and *Webb v. Fairman*,<sup>d</sup> the meaning of the word month was decided by a jury. If no evidence of the usage was adduced before the jurors, still they had a right to exercise their own knowledge on the subject. This agreement is a mercantile transaction strictly so called, and in *Regina v. Chawton*,<sup>e</sup> Littledale, J., said, that in mercantile instruments months are understood to be calendar months. In the following cases the word month has been held to be calendar month:—*Titus v. Lady Preston*,<sup>f</sup> *Hipwell v. Knight*,<sup>g</sup> *Cockell v. Gray*,<sup>h</sup> *Rex v. Cussens*,<sup>i</sup> *Catesby's case*,<sup>k</sup> *Dyke v. Sweeting*.<sup>l</sup>

Mr. Watson, contra. The general rule on this subject is, that in the construction of acts of parliament, and in contracts between parties, lunar, and not calendar months are intended, unless it can be collected from the contract that the parties mean calendar months. There are two exceptions to this rule, namely, ecclesiastical matters and mercantile transactions, in which a different mode of computation prevails. *Lang v. Gale*.<sup>m</sup> In *Regina v. Chawton*,<sup>n</sup> Littledale, J., said that lunar months were generally intended, except in mercantile transactions. Evidence of usage or custom may be admitted in some cases, but as month must be taken to denote lunar months in all temporal matters, there is here no uncertainty which is capable of being explained by parol evidence. And in all written contracts where no parol evidence is admissible, the construction is for the court, and not for the jury.

*Cur. adv. vult.*

Lord Denman, C. J., afterwards delivered the judgment of the court. In this case the plaintiff was an auctioneer, who sued the defendant for a sum of money which he alleged to be due to him for his commission on the sale of an estate. It had been agreed between the parties that if the sale should be completed within two months, the plaintiff was to receive a commission of one per cent., if not within that period, then only one-half per cent. The sale took place within two calendar months, but not within two lunar months. The plaintiff offered evidence for the purpose of showing that in the auction trade "two months" meant calendar, and not lunar months, but, the learned judge, being of opinion that that evidence was not admissible, it was withdrawn. The verdict was found for the plaintiff, and a rule nisi has been obtained to enter a nonsuit, or for a new trial. To support this rule we are pressed with the proposition that the word "months" in all temporal matters is always to be construed to mean lunar months; that a contrary meaning is only to be inferred when it is clear from the context what the intention

of the parties was; and that no such meaning is to be inferred from the present contract. The interpretation of a contract is always matter for a judge, but when it is doubtful whether a particular word is used in a sense differing from its ordinary acceptation, the judge should leave to the jury whether in that trade such a word bears such a sense; *Lang v. Gale*,<sup>o</sup> *Hutchinson v. Bowker*,<sup>p</sup> and evidence must be received to serve as a guide to a right determination. *Smith v. Wilson*,<sup>q</sup> *Jolly v. Young*. We do not think that the plaintiff has established his case that the word "months" means calendar months. We agree that the word, unless expressly qualified, generally means lunar month, but we do not think that in this case there exists any proof of qualification. It is quite true that a contract is to be interpreted from the surrounding circumstances, (*Walker v. Hunter*);<sup>r</sup> but here the conduct of one party alone is alleged as a reason for our deciding for the plaintiff. That is not sufficient. The cases cited in argument where the word month has been interpreted calendar month seem to have been decided on other points. On the whole, we are of opinion that the plaintiff has not offered sufficient evidence to support the verdict, yet, inasmuch as some evidence was tendered and refused which we think admissible, we shall make the rule absolute for a new trial, and not for a nonsuit.

Rule absolute for a new trial.

*The Queen v. Gibson*. Michaelmas Tm., 1847.

QUO WARRANTO.—STATUTE 9 & 10 VICT. c. 95.—CLERK OF THE COUNTY COURT OF ST. ALBANS.

*Case in which the court will not dispose of a question on motion for a quo warranto, depending on the construction of a statute.*

THIS was an application for a quo warranto calling upon Mr. Gibson, the clerk of the St. Albans County Court, to show cause by what authority he claimed to fill that office.

The Attorney-General and Mr. Welsby showed cause, and contended that at the time of the application the office was full. The question intended to be raised depends upon the construction of the statute 9 & 10 Vict. c. 95, intitled "An Act for the more easy recovery of Small Debts and Demands." The person against whom this application is made was appointed clerk of the St. Albans court when the provisions of that act of parliament were carried into operation. Before that time there was a St. Albans Court of Request for the recovery of Small Debts, established by the 25 Geo. 2, c. 38, under which a Mr. Ablett had been appointed clerk, and continued so up to the time of the passing of the late act of parliament. The act under which Mr. Ablett was appointed is included in Schedule A. annexed to the 9 & 10 Vict., and by section 5 of that act the Queen by an order in council has power either to continue the statutes so specified in the

<sup>c</sup> 1 Esp. 186. <sup>d</sup> 3 Mee. & Wels. 473.

<sup>e</sup> 1 Q. B. R. 247. <sup>f</sup> 1 Stra. 652.

<sup>g</sup> 1 You. & Col. 401. <sup>h</sup> 3 Br. & Bing. 186.

<sup>i</sup> 1 Siderfin, 186. <sup>k</sup> 6 Coke, 62.

<sup>l</sup> 1 Willes, 585. <sup>m</sup> 1 M. & S. 111.

<sup>n</sup> 1 Q. B. R. 247.

<sup>o</sup> 1 Esp. 186.

<sup>p</sup> 1 M. & S. 112.

<sup>q</sup> 5 Mee. & Wels. 535. <sup>r</sup> 3 B. & Ad. 729:

<sup>s</sup> 2 C. B. R. 324.

schedule, to enlarge the district, or to abolish them altogether. By an order in council dated the 9th of March last, the St. Albans court was abolished. The question now sought to be raised must involve the consideration of several clauses in the statute of Victoria. [Lord Denman, C. J. It appears there are other cases depending upon the construction of this act of parliament, and I do not think we ought to dispose of a question of so much importance on motion.] This is not an office for which a *quo warranto* would lie. It lies for any office of profit under the Crown, or for any matter of franchise, and in *Res v. Hulston*,<sup>1</sup> the court said it would grant a *quo warranto* against a person exercising the office of steward of a Court Leet, but not in the case of a Court Baron, that being only a private right. The remedy by *quo warranto* is analogous to a writ of mandamus, and the court will only grant it where the public are interested, and where there is no other remedy. This right may be decided, the same as the right to toll, by an action for money had and received. [Coleridge, J. Might not this objection be taken on demurrer to the return?] This is only a preliminary objection to the particular remedy now applied for. [Coleridge, J. In *Regina v. Darley*,<sup>2</sup> the House of Lords decided an objection of this kind on a judgment given in the court below on demurrer.]

Lord Denman, C. J. I think this case is one which ought to be fully argued, and that we ought not to dispose of it on motion.

Rule absolute.

### Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

*Ex parte Edward B. G. Preston.* M. T., 1847.

HABEAS CORPUS.—CUSTODY OF INFANT.  
—POWER OF ATTORNEY BY PARENT  
ABROAD.

*A return having been made to a habeas corpus to bring a child of nine years of age into this court in order that it might be delivered over to the care of certain parties named in a power of attorney executed by the mother of the infant, who was residing in India, and it appearing that the child was in the custody of certain guardians appointed by its grandmother, who had left it certain property, and whom the mother had corresponded with, and to whom she had expressed her satisfaction at the way in which the child was treated, and it not appearing that the mother had expressed, or that there was reason for any dissatisfaction at the way in which the child was brought up, this court refused to make any order to change the custody of the infant.*

*Bramwell* having on a former day obtained a writ of *habeas corpus* directed to a Mr. Hutchons, commanding him to bring into court a child of the name of Edward B. G. Preston, (of

the age of nine years,) in order that he might be delivered over to certain parties, pursuant to the terms of a power of attorney, executed by his mother and step-father in India, and transmitted to this country.

*Howill* showed cause.

*Bramwell*, contra.

The following cases were cited:—*Res v. Greenhill*, 4 Ad. & El. 624; *Re Lloyd*, 3 Man. & Gr. 547; Co. Lit. 88, b.; Comyn's dig. tit. Guardian D.; *Res v. Johnson*, 1 Stra. 579; *Res v. Isley*, 5 Ad. & El. 441; *Ex parte M'Clellan*, 1 Dowl. 81.

The facts of the case are stated in the following judgment delivered by

*Patteson, J.* This was an application on the part of Mr. and Mrs. Templar, for a writ of *habeas corpus* to have a child delivered over to the charge of a person appointed by a power of attorney executed by Mr. and Mrs. Templar in India. The child is about nine years of age, and is the son of Mrs. Templar, by her former husband, Mr. Preston. I was much struck at the time of the application with the novelty of the case. A person out of the jurisdiction of the court executing a power of attorney to authorize the attorney to demand the possession of the child. No instance of a similar kind has occurred that I am aware of, and I was struck with the difficulty; but the case does not turn entirely on that, because there are peculiar circumstances. It appears that Mrs. Preston was left a widow in India, with two children, one not more than two years and a-half, and one younger, who never was in England at all; it was only a few months old. It appears that Mrs. Preston, the mother of her deceased husband, was a person of some property, living in England, and she offered to the widow to take charge of the children and bring them up, if they were sent over. She wrote and expressed her gratitude, but did not at the time send the children, saying they were too young. However, she afterwards sent one of her children over to the grandmother; the grandmother taking the child to live with her some time till she went over to Germany, when she left the child in the charge of a person of the name of Cross, and the grandmother then returned to England, and died shortly afterwards. She made her will, and appointed as her executors two gentlemen of the names of Potts and M'Naughten, and appointed Mr. Hutchons, jointly with Mr. Potts, executors and trustees of all her property, supposed to be a sum of 5,000*l.*, (but afterwards they discovered some property in India,) for the benefit of her two grandchildren: she also appointed these two gentlemen guardians of the children. That was not a valid appointment, of course, because she had no right to make it. After her death, it seems that Mr. Hutchons, with the consent of the other executor, Mr. Potts, had the entire management of the child, and sent it to a preparatory school in the neighbourhood of the Regent's Park. It was afterwards taken from that school, not from any reasons of dissatisfaction, but by the advice of his

<sup>1</sup> 1 Stra. 621.

<sup>2</sup> 12 Clark & Fin. 520.



medical people. Mr. Hutchons sent the child to a school at Hastings, and he was there at the time this application was made. Then there is some correspondence between the mother and Mr. Hutchons, in which the mother expressed the greatest anxiety to know where the child was after her mother-in-law's death, and on being informed of what had taken place, she appears entirely to have acquiesced in all that had been done, and she wrote in terms showing that she was much obliged to the gentlemen for the trouble they had taken, and she did not object to the child remaining with Mr. Hutchons in any of her letters; but it does appear that after some time, she was not well satisfied with the allowance that the trustees made to her for the maintenance of the other child. They had power by the will to advance any reasonable sum for the maintenance of the child in India, and they had paid her 4*l.* a month, with which she was dissatisfied; but she did not make any complaint against Mr. Hutchons for his management of the child in England. But on a sudden, after having married again, there comes over a power of attorney, executed by her and her husband, authorising certain persons to demand the child; and it goes on to a great many other things—authorising them to call upon Mr. Hutchons and Mr. Potts to give an account of the property they had received under the will, and expressly authorizing the parties named in the power of attorney to apply to the Court of Chancery to make the children wards in Chancery, and have the property properly secured to them. I do not know whether any step of that kind has been taken, nor is it material; but it appears no complaint was made by the mother, nor do I exactly collect from the affidavits what is her motive in wishing to take away the child from the custody of this gentleman. I suppose it must be about some question as to money; I suspect something of that kind, because it is not surmised that the child has sustained any injury; therefore I do not think I have got at the real history of the motives which influenced her to execute the power of attorney. The affidavit in answer states, that Mr. Hutchons was informed by a Mr. Harrison, an attorney for the parties making the application, that it was the intention to put the child under the care of a Mrs. Allen. There has been no opportunity of answering that affidavit, and therefore I do not lay much stress on it, because it may be capable of explanation; only it is sworn that Mrs. Allen is not a proper person to have the charge of the child, being a person in low circumstances, letting lodgings to persons in a low degree, and assuredly not the right person to have the charge of the child. But there is no specific ground for the mother wishing to take the child away from Mr. Hutchons. I have not been able to find any case like the present. I have looked at Mr. M'Pherson's book on the law of infants, and I have looked at the authorities, and I do not find any instance of such an application being made by any person non-resident in England giving a power of attorney; and I doubt very much

whether the court would allow that to be done; whether the inconvenience of coming to England or not must be sustained I cannot tell, but I doubt whether such an application can be entertained; but I have found, upon looking at the cases, one in Jacob's Reports, (*Lyon v. Blenkin*, Jacob, 245,) the nearest case, and that is a case of very strong authority. [His lordship here stated the facts of the case.] That case, indeed, appears to be almost upon all-fours with the present; here is money left by a grandmother, and an appointment of guardian, and the acquiescence of the mother in what the guardian was doing, and then, without any reason, on a sudden she executes a power of attorney, desiring certain persons to take the child out of the custody of the guardian. Lord Eldon, in the case I have mentioned, refused to do so, and that is a case certainly very much in point. There is another case mentioned in M'Pherson's book on Infancy, (p. 138,) which came before Lord King. [His lordship also referred to the facts of this case.] There is, therefore, abundant authority to show me that I cannot be justified in taking the children from the custody acquiesced in by the mother, and against whose care nothing is suggested affecting its interest or morals, or that the child is not well brought up. If there be anything about pecuniary matters—if there be any difficulty upon that point, that will be a proper subject for the Court of Chancery, and then incidentally the question as to the custody of the child will arise. But sitting here in a court of common law, and quite independent of asking the child whom he would wish to go to, I feel I am not justified in changing the custody. I did not ask the child anything, because it was difficult to say at what age a child can properly be asked any questions upon such a subject, and it does seem to me to be a great absurdity to ask a little child nine years of age, brought up by a particular person he knows, whether or not it would wish to go to a person authorised by his mother, of whom he can have no recollection. But I think, that independently of all, the cases I have alluded to and the particular circumstances of this case, show that I have no authority to change the custody. The rule must therefore be discharged.

Rule discharged.

#### Common Pleas.

*Tulmer, appellant, and Allen, respondent, and two other appeal cases.* Michaelmas Term, 1847

#### REGISTRATION APPEAL.—PAPER BOOKS.—DELIVERY NUNC PRO TUNC.

*In registration appeal cases, the rule is that the paper books must be delivered to the judges four days before the day appointed for the hearing of the appeals, and the court will not entertain an application for leave to deliver them nunc pro tunc unless some good reason be shown for the delay.*

Gray, on behalf of the applicants in three cases, applied to the court to be allowed to deliver the paper books signed by the judges



*nunc pro tunc*. He said his application was entirely to the indulgence of the court; as he was not in a situation to assign any reason for the non delivery of them at the proper time, namely, 14 days before the day of hearing.

*Wilde, C. J.* It appears that by the 60th section of the Registration Act, 6 Vict. cap. 18, express provision is made for the hearing of appeals. The revising barrister's judgment is to be final, unless the party shall prosecute an appeal, which appeal, according to the 60th section, "shall be prosecuted, heard, and determined, in and by her Majesty's Court of Common Pleas, at Westminster, according to the ordinary rules and practice of that court with respect to special cases, as far as the same may be applicable and not inconsistent with the provisions of this act, or in such manner and form, and subject to such rules and regulations as the said court from time to time, by any rule or order made for regulating the practice and proceedings in such appeals, shall order and direct." This section then refers to a well-known existing practice with regard to the hearing of special cases, and the court saw no reason, when first called upon to act under it, to adopt any other practice than that referred to in the section, which was, that the paper books should be delivered by both sides four days before the day of hearing; it being provided that when one side was in default, the other side might deliver all the paper books at the cost of his opponent. Now we are asked to depart from that practice, and no reason is given for our doing so. We think that when a rule is so well known as this is, an application to the court to allow the case to be heard in a manner different from such rule, without the party's being able to say why, is one which the court cannot entertain. Some good reason ought at least to be assigned, and as there is the absence of anything of the kind in the present case, the application cannot be granted.

Application refused, and the cases struck out of the list.\*

### Court of Exchequer.

*Clay v. Collier.* November 20, 1847.

JURISDICTION OF A JUDGE AT CHAMBERS UNDER THE 7 GEO. 2, c. 20, AND IN ACTION OF COVENANT—COSTS.

*The 7 Geo. 2, c. 20, extends to actions of cove-*

\* On a later day in the term,

*Wilde, C. J.*, on behalf of the defendant, applied to have the cases restored to the paper, and to be allowed to deliver the paper books as asked before. He produced an affidavit which stated that the country attorney who had conducted the case up to the first day of term, relied on the London agent to deliver the paper books, and, on the other hand, the London agent having only been appointed on the first day of the term, acted under the impression that the paper books had been delivered by the country attorney.

The court said that under the circumstances, a sufficient excuse had been shown to induce them to grant the application.

*nunt on the mortgage deed, as well as to actions on bonds given as a collateral security. The jurisdiction conferred by that statute on the "court," may be exercised by a judge at chambers—and semble, the "costs," to which the plaintiff is entitled, are only the costs in such suit.*

*Where a mortgagee sued on the covenant for repayment on the mortgage deed, and a judge at chambers made an order on him under the 7 Geo. 2, c. 20, to stay proceedings, and give up the deeds, &c. on payment of principal, interest, and costs of that suit, the court discharged a rule for setting aside the order.*

THE facts of this case were these. The plaintiff had lent the defendant 400*l.*, on the security of a mortgage of some premises, and in November, 1846, brought covenant on the covenant for repayment in the mortgage deed. In February the defendant obtained an order from Baron Platt at chambers upon the plaintiff to stay proceedings, and to give up the deeds and securities, upon being paid his principal, interest, and costs of *that suit*. The plaintiff had incurred considerable costs in actions of replevin, ejectment, &c., against the tenants of the mortgaged premises, and he contended that these should be included in the costs to be allowed him; and he forthwith applied to the Lord Chancellor for an injunction to restrain the defendant from enforcing the order. After the matter had been argued, the Chancellor decided that Baron Platt had jurisdiction to make the order, and that he would not disturb it. The plaintiff thereupon, in the course of the last term, obtained a rule *nisi* in this court to set aside the order on three grounds;—first, that the statute 7 Geo. 2, c. 20, gave jurisdiction in such matters only to the full court, and not to a judge at chambers. Secondly, that covenant was not an action in which even the full court could interfere. Thirdly, that the costs should have included all the costs incurred by the plaintiff in his proceedings against the tenants; and, fourthly, that the plaintiff's attorney had a lien on the deeds for his costs.

*Whitehurst* and *T. Flood* showed cause. The plaintiff's attorney could have no lien on the deeds. They were deposited as a security for the repayment of the mortgage money, and the plaintiff could give no greater lien than he had himself. They were then stopped by

*Pollock, C. B.*, who said it was clear that the plaintiff's attorney could not claim any such lien on the deeds.

*Whitehurst* and *T. Flood*. The relief allowed by the statute was not to be confined solely to cases where mortgagees sued on bonds given as collateral security, but was intended to apply to all cases where they sought to enforce the securities for the repayment of their money. The word "bond" had not the narrow signification contended for on the other side. It meant generally the admission of a debt under seal. 11 Mod. 218; 1 Vent. 42; *Cole's case*, 2 Vent. 193; *Watchall's case*, Keilw. 313; 2 Roll Abr. tit. Fait.; *Petersdorf's Abr.*, Bond—where all the authorities were collected, and

it was said that it would be proper to describe a bill under seal as a bond. The preamble of the statute, the 7 Geo. 2, c. 20, taken together with the enacting part, fully supported this view. The statute, after setting forth as follows, "Whereas mortgagees frequently bring actions of ejectment for the recovery of lands and estates to them mortgaged, and bring actions on bonds given by mortgagors to pay the money secured by such mortgages, and for performing the covenants therein contained, and likewise commence suits in her Majesty's courts of equity to foreclose these mortgagors from redeeming their estates; and the courts of law, where such ejectments are brought, have not power to compel such mortgagees to accept the principal monies and interests due on such mortgages and costs, or to stay such mortgages," &c., &c., proceeded to enact, that "where any action shall be brought on any bond for payment of the money secured by such mortgage or performance of the covenants therein contained," the mortgagor might stay the proceedings by paying to the party, or, if he refused, by bringing into court "all the principal money and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage." This court had expressly decided that the statute applied to actions of covenant in *Dixon v. Wigram*, 2 Cr. & J. 613. As the statute conferred the jurisdiction on the court generally, it was a well established rule that the court could exercise the jurisdiction as it did any of its ordinary common law jurisdictions, and delegate the duty to a judge at chambers. The only remaining point was whether the learned Baron was right in deciding that the costs to be allowed were only the costs in that action, and it was now clearly too late to review his decision. If the plaintiff thought there was anything wrong in the order, he should have come at once to this court and said that the judge had not allowed the proper costs, and prayed that the order should be amended so far, or altogether rescinded. He did not do that, but chose to appeal to the Lord Chancellor, and having failed there, he now came here long after the proper time for reviewing the order here had elapsed. He had two modes of seeking redress—by an appeal to the Lord Chancellor or to this court, and having made choice of one, he ought not be allowed to try the other; at all events, he was too late.

*Martin and White* in support of the rule.—The decision in *Dixon v. Wigram* was so clearly in contravention of the plain words of the statute, that this court could not uphold it. The rule for the construction of statutes had been well laid down by Baron Parke in *Becke v. Smith*, 2 M. & W. 191, who said, "It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any mani-

fest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further." [Parke, B.—That I took from the judgment of Mr. Justice Burton in *Warburton v. Loveland*.] Applying this rule to the construction of the statute, it was impossible for any human being to bring this action of covenant within the scope of its provisions, and the court, therefore, was not bound to act on a single decision given without grave consideration, as this decision evidently was, the report, stating merely that "the court thought the case was within the statute." [The Court.—The case having been acted on for many years, it would be a matter of great difficulty to set it aside, whether it was originally rightly or wrongly decided.] As to the second point, though the court might have jurisdiction, yet it was clear that a judge at chambers had it not. Where a particular power was given by statute, it must be exercised as the statute pointed out. *Jones v. Addams*, 2 Dowl. & Y. 111; *Shaw v. Roberts*, 2 Ib. 25; and here the statute spoke only of the court; for instance, the court shall and may discharge such mortgagor or defendant. There the jurisdiction was given to the court, and it could not be delegated to a judge at chambers. [Alderson, B. If your argument be right, an act passed for the benefit of the public would be useless during three-fourths of the year.] As to the amount of the costs, it was clear that the statute meant that the mortgagee should be paid all his costs at law and in equity. They would not trouble the court on the question of lien.

*Pollock, C. B., Parke, Alderson, and Rolfe, B.*'s, delivered their judgments *seriatim*, to the effect that actions of covenant were within the mischiefs which the act intended to remedy, and that though, if the question were new, it might be more doubtful, yet, the point having been once decided, and that decision being in furtherance of the remedial objects of the statute, they would not disturb it. As to the second point, they thought that where a statute conferred jurisdiction on "the court" generally, without particularizing, specifying, qualifying, or limiting how it was to be exercised, they might exercise it in just the same manner as they did any of their common law jurisdictions, and consequently refer matters under it to a judge at chambers. On the question of time, they thought the plaintiff should have come sooner to this court. His proper course would have been to apply in the next term to have the order set aside or modified.

Rule discharged with costs.

#### Court of Bankruptcy.

*Lancaster and Preston Fire and Life Insurance Company v. Davis.*

14th December, 1847.

AFFIDAVIT OF EXECUTION OF BOND.—PRACTICE.

*A commissioner will not approve of a bond*

\* Hudson & Brooke's Irish Rep. 648.

given under the statute 1 & 2 Vict., c. 110, s. 8, unless the trader-debtor, at the time the bond is submitted for approval, produces an affidavit of execution by the sureties.

THE debtor (Davis) was served, on the 24th of November, with the copy of an affidavit of debt filed in this court on behalf of the Lancaster and Preston Fire and Life Insurance Company, and with a notice in writing, requiring immediate payment, pursuant to the 1 & 2 Vict., c. 110, s. 8. Notice was duly given, that the debtor had entered into a bond with two sufficient sureties, viz., Martin Luther Pritchard and John Wilson, and that the bond should be submitted to the commissioner in rotation this day for his approval. The parties accordingly attended before Mr. Commissioner Holroyd, as commissioner of the day, when the town agent for the debtor's solicitor produced the bond, which was sufficient in amount and apparently duly executed.

The Solicitor for the creditor then objected, amongst other things, that there was no affidavit of the execution of the bond by the sureties. Without such an affidavit, it was impossible to know whether the bond was exe-

cuted by Martin Luther Pritchard and John Wilson, as it purported to be, or not.

The Town Agent, for the debtor's solicitor, said, he had only received instructions by this morning's post, and had no doubt, if time was given, that he could procure an affidavit of execution by the sureties.

Mr. Commissioner Holroyd inquired what time would be necessary to procure the requisite affidavit.

The Town Agent replied, that if he wrote by this night's post, he might have a reply on Thursday morning, the 16th inst.

Mr. Commissioner Holroyd observed, that the affidavit and notice were served on the 24th ultimo, consequently the twenty-one days provided by the statute would expire tomorrow, (Wednesday,) the 15th inst.; under these circumstances, he could do nothing to assist the debtor. It was quite impossible he could approve of a bond under the statute, without an affidavit of the execution by the sureties. If the debtor wished to prevent his omission from operating as an act of bankruptcy, he must compound or arrange with the creditors.

The application to approve of the bond was therefore refused.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Law of Attorneys and Solicitors.

[THIS Section of the Digest comprises principally the cases decided in the Courts of Equity, bearing on the Law of Attorneys and Solicitors, but some have been added from the Reports of the Legal Observer in other courts.]

#### AGENT, LONDON.

1. *Costs.—Authority.*—The London agent of a solicitor who had been employed to prove a debt in an administration suit, ordered to pay the costs of proceedings taken by him in the Master's office, with the view of preventing the diminution of the estate, but without authority from the original client. *Matins v. Greenaway*, 35 L. O. 142.

2. *6 & 7 Vict. c. 73.*—Since the passing of the 6 & 7 Vict. c. 73, an attorney who is only admitted in the Courts of Queen's Bench and Common Pleas can recover for business done in the Court of Exchequer in the name of his London agents who are duly admitted and enrolled as attorneys of that court. *Hulls v. Lea*, 35 L. O. 145.

#### APPEARANCE.

*Deceased party.*—After considerable delay in the prosecution of a suit, the solicitor of a deceased party was served with notice of motion: Held, that his duty to the court rendered it proper for him to appear on motion. *Chalie v. Gwynne*, 9 Beav. 319.

#### CERTIFICATE, RENEWAL OF.

1. An attorney took out a certificate to practice for the first year after his admission; he afterwards neglected to do so for about 10 years, during a great part of which time he acted as managing clerk in an attorney's office; he then gave the proper notices for the renewal of his certificate, under the rule of Easter Term, 1846, on the last day of the present Term, an application being now made under special circumstances for him to be permitted to take out his certificate at once.

*Held*, that the court had no power to interfere and enable him to do so, but that he must wait until the last day of Term to make his application. *Ex parte Burnes*, 35 L. O. 12.

2. *Refused after conviction 18 years ago of a conspiracy.*—An attorney was convicted 18 years ago of a conspiracy to concert a fiat in bankruptcy. It was sworn that the judge who tried the cause expressed doubts of the guilt of the applicant in his summing up, and that he was not guilty of any fraud in the transaction. He had since acted as clerk to various attorneys up to the present time. The court nevertheless refused to grant an order for the renewal of his certificate. *Ex parte William Gray*, 35 L. O. 119.

#### CHANGE OF SOLICITOR.

*Service of Notice of motion.*—18th General Order of October, 1842.—On the application of defendant's counsel, a motion stood over. When it came on again it appeared that the

defendant had since changed his solicitor but without order, and no counsel then appeared for him. The motion was granted on an affidavit of service. *Davidson v. Leslie*, 9 Beav. 104.

#### COUNSEL'S FEES.

**Affidavit.—Taxing Master.—Costs.**—The fact of a petition being unopposed is not of itself a sufficient reason for the disallowance of the costs of two counsel upon a petition of a retiring trustee for a reference to appoint a new trustee, and of a petition to confirm the Master's report allowed under the stances.

A petition to review a taxation was successful, but the petitioner not having taken proper steps to satisfy the Taxing Master when the matter was in his office, was ordered to pay the costs.

The court having determined to communicate with the Taxing Master as to a proceeding in his office, declined to receive an affidavit tendered by the parties of what had taken place. *Sturge v. Dimsdale*, 9 Beav. 170.

#### COUNSELS' CLERKS' FEES.

Fees to counsels' clerks are mere gratuities for which they have no legal demand, and the court has no jurisdiction in respect of such fees as against the clerks.

The sum allowed for clerks' fees on taxation does not limit the sum which may be spontaneously given, but it does limit the sum which the solicitor can safely pay without the special direction or permission of the client,

The regulation of the 5th November, 1840, (ordines can. 157,) is not a general order of the court giving the clerks a legal demand for the fees therein mentioned, but a mere intimation of opinion of the equity judges that they may be properly allowed in taxation.

Petition against a clerk of counsel dismissed for want of jurisdiction, but without costs, on account of his improper conduct in the matter complained of. *Ex parte Cotton*, 9 Beav. 107.

#### ERROR IN DECREE.

**Costs.**—In drawing up a decree, the word "inquiry" was erroneously inserted for the word "sale." It became necessary for the defendant to make an application to correct the error: *Held*, that the solicitor of the defendant must bear the costs. *In re Bolton*, 9 Beav. 272.

#### GRATUITY.

**Expedition money.—Accountant-General's office.**—An order was made for the division and transfer of a fund in court, but before it could be accomplished the funds became altered, and the solicitor presented a petition for a similar object: *Held*, that it could not be considered as unnecessary, it appearing that the solicitor using his best exertions was unable to act on the first order by reason of a difficulty as to the legacy duty, the solicitor was therefore allowed the costs upon taxation.

Expedition money paid by a solicitor to a stationer or writing clerk employed in the registrars, disallowed upon taxation.

A gratuity paid to the clerks of the Accountant-General's office, was disallowed to the solicitor on taxation, as was also a fee paid upon bespeaking an order for transfer which could be made available. *In re Bedson and Ruston*, 9 Beav. 187.

#### LIEN.

**Stop order.**—A solicitor's lien upon the fund is not a general lien. It extends only to costs in the cause and costs immediately connected with costs in the cause; as, for instance, the costs for successfully protecting a solicitor's right to the costs in a cause.

A stop order does not affect any right, and it is therefore unnecessary to specify that it was made "without prejudice." *Lucas v. Peacock*, 9 Beav. 177.

#### MORTGAGE COSTS.

1. **Solicitor and client.**—6 & 7 Vict. c. 73.—Petition by mortgagor for taxation of the mortgagee's solicitor's bill, presented five months after it had been discharged by retainer, dismissed with costs, on the ground that it neither alleged any circumstances of pressure, nor any specific items of overcharge. *Dunt v. Dunt*, 9 Beav. 146.

2. **Settled account.**—A mortgagee's solicitor retained the amount of his bill of costs out of the produce of the sale of the mortgaged estate, and he charged the amount in an account delivered to the mortgagor. *Held*, that an order for taxation within twelve months might be obtained as of course, and a special petition having been presented for that object, the order was made, but the petitioner was ordered to pay the costs. *In re Bignold*, 9 Beav. 269.

#### NOTICE TO SOLICITOR.

A special order to amend, without prejudice to an injunction, must be made to the court, and not to the Master.

A party had some time since left home and not been heard of, and it was not known whether he was living or dead. His solicitor ceased to act for him, but no order had been made for changing solicitors. *Held*, that notices served on such solicitor were regular. *Wright v. King*, 9 Beav. 161.

Case cited in the judgment: *Christ's Hospital v. Grainger*, 1 Phill. 634.

#### PRODUCTION OF CASES AND OPINIONS.

**Privileged communications.**—Cases and the opinions of counsel thereon anterior to the litigation held privileged from production. *Reece v. Trye*, 9 Beav. 316.

#### STRIKING OFF THE ROLL.

Circumstances under which the court refused to rescind an order for striking an attorney off the rolls.

When an order to strike an attorney off the rolls shall be made at any future time, the judges will see the order obeyed at once in court.

The rolls are to be produced for that pur-

pose. *In re Macey*, 34 L. O. 328; 35 L. O. 10, 65.

#### TAXATION.

1. *Legacy duty*.—As to what items of disbursement are properly included in a bill of costs. Legacy and probate duty estimated at 140*l.* were payable in order to make available certain funds in court. The solicitor, at the request of the court, engaged to pay them, and took a charge on the funds for 140*l.* and interest. The duties, amounting to 78*l.* only, were paid by the solicitor. *Held*, that that sum formed a proper item in his account on the taxation of his bill of costs. *In re Bedson*, 9 Beav. 5.

2. *Solicitor and client*.—6 & 7 Vict. c. 73.—The single fact, that, upon a transfer of a mortgage, a mere draft bill of costs of the mortgagee's solicitor, is for the first time produced, and then paid, is not of itself, without proof of pressure or fraud, a sufficient "special circumstance" to authorize taxation after payment, nor is that fact sufficient, coupled with overcharges which are not so gross as to evidence fraud.

The taxation (under the 6th and 7th Vict. c. 73) of a solicitor's bill at the instance of a third party "liable to pay," is regulated by the relations existing between the solicitor and his client, and not as between the solicitor and such third party. *In re Fyson*, 9 Beav. 117.

3. *Payment—Solicitor and client*.—Where the Taxing Master has received no special directions from the court in regard to payments made by a client to his solicitor, it is his duty to confine himself to simple payments plainly proved to have been made on account of the bill of costs.

In ascertaining what is due on bills of costs, and in consideration of what payments have been made on account of them, questions of law and fact of considerable difficulty may incidentally arise, and may possibly justify and require discussion and determination even in the jurisdiction exercised by the court or petition for taxation. *In re Smith*, 9 Beav. 182.

4. *Costs of journey unauthorised*.—A solicitor acting for a third mortgagee negotiated for a transfer of the first mortgage, and had proceeded so far as to send the drafts. He took a journey into the country to complete the matter, which proved fruitless, and having previously received an intimation that the second mortgagee had already obtained a transfer of the first mortgage, the costs of the journey were on taxation disallowed, on the ground that after the intimation he ought to have obtained his client's instructions before incurring the expense. *In re Price*, 9 Beav. 234.

5. *Additional bill—Error*.—A solicitor having knowingly, in his bill of costs, fixed the rate of his charges for business, cannot afterwards on a taxation be allowed to increase it.

Pending a taxation, leave given upon special application to carry in an additional bill for specified items of undercharge and omission from error and mistake. *In re Walters*, 9 Beav. 297.

6. *Attachment*.—11th order of Aug. 1841.—*Enforcing order*.—Upon a taxation not in cause, a sum was found due to a solicitor from his client. *Held*, that to compel payment proceedings must be had under the old practice, and not under the 11th order of August, 1841. *In re Lovell*, 9 Beav. 332.

7. *Interest on bill of costs*.—*Payment into court*.—Interest on a bill of costs while under taxation not allowed.

Taxation of a bill was directed on the terms of paying a sum of money into court. The fund accumulated. *Held*, that the solicitor was not entitled to the stock and the benefit of the accumulations, but that the whole must be sold, and the produce applied in part discharge of the bill. *In re Smith*, 9 Beav. 342.

8. *Irregularity—Waiver*.—An objection to an order for taxation for irregularity, cannot be considered as waived by ambiguous acts on the part of the party taking it.—The waiver must be formal. *Re Mackerill*, 35 L. O. 96.

See *Counsel's fees*; *Counsels' clerks' fees*; *Gratuity*; *Mortgage costs*.

#### TROVER.

*Conversion*.—An attorney had in his possession goods which had been deposited with him as security to cover a promissory note and a bill of exchange held by his client. Actions had been brought, the proceedings in which were stayed under an order for payment of debt and costs within an hour after taxation. Within the hour the money was tendered at the attorney's office, and the return of the goods demanded. The attorney, whose managing clerk had had the direction of the whole business, declined to accept the money and to restore the goods until that clerk, who was not at that moment in the office, should return.

*Held*, that this was no act of conversion such as would maintain trover. *Evans v. Bell*, 35 L. O. 37.

#### TRUSTEE.

A solicitor acting as self-constituted trustee, cannot make any charge for time or trouble, and a bill of costs containing any charges of this nature will be taxable after payment, unless the payment has been voluntary, and after a full opportunity of examining the items of the bill. *In re Foulkes*, 35 L. O. 34.

#### WIFE'S SEPARATE ESTATE.

*Costs*.—A solicitor, who had transacted business in reference to the separate property of a married woman, both previously and subsequently to her marriage, and who had proved against her husband for the amount, under a fiat, filed a bill against the husband and wife, and the trustees of the settlement, seeking to charge the wife's separate estate in respect of the debt.

*Held*, that the wife's estate was not directly liable, and that the bill must be dismissed as against the husband and wife, without costs, and as against the trustees, with costs. *Cal-low v. Howle*, 35 L. O. 36.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 25, 1847.

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—"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## STATE OF THE LAW BILLS BEFORE PARLIAMENT.

BOTH Houses have adjourned to Thursday the 3rd February. On the last day of the sitting (Monday, the 20th instant,) the Royal assent was given to the Railway Bill which we noticed in our last number, and the Act shall be submitted to our readers next week. The Bills for promoting Public Works and suppressing Crime and Outrage in Ireland were also passed the same day. It was unnecessary to pass an Indemnity Act in regard to the authority given by the Government to the Bank of England, to stay the commercial panic upon which the parliament had been mainly assembled, for it happily occurred that no breach of the Bank Restriction Act took place.

We anticipated that no important measure of law reform would be propounded before Christmas, and we have only, therefore, to notice the projects which are to be introduced after the recess.

The *Attorney-General* has given notice of his intention to introduce no less than four bills on the first day of the next sitting of the House, viz. :—

"A Bill to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales, with respect to persons charged with indictable offences.

"A Bill to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales, with respect to summary convictions and orders.

"A Bill to regulate the holding of Courts of Special Sessions and Petty Sessions.

"A Bill to protect Justices of the Peace from

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vexatious actions for acts done by them in execution of their office."

The Epiphany Quarter Sessions Bill, to which we have elsewhere adverted, stands for second reading on the 9th February; and the Roman Catholic Charitable Trusts Bill for the same day. This latter bill does not appear to be *professionally* objectionable, and we shall leave it for the present to those who are watching the interests of the Church. The object and principal clauses of the bill were stated, p. 156, *ante*.

It is evidently not intended that the improvement of the Court of Chancery should be neglected. Besides the various returns which have already been ordered, regarding the state of business, and the fees and expenses of administering justice in that court, the following return relating to the Masters' offices will be moved for by Mr. *Aglionby* :—

"Return, showing the date of the appointment of each of the present Masters in Ordinary in Chancery, with the annual amount of each of their respective salaries, and when paid; also, stating whether any and which of such present Masters are under any and what Act or Acts of Parliament entitled, upon retirement, to any and what retiring pension; and also, stating whether any and what Master in Ordinary have, since the year 1830, retired upon any and what retiring pension, and for what periods the same were respectively paid and received."

The Ecclesiastical Courts will be brought under the notice of parliament by Mr. *Bouverie* at an early period. The extraordinary case on which we have animadverted in another article, strikingly shows the necessity of an extensive alteration in the constitution of those courts.

A Bill to exempt the Occupiers of Small

Tenements from Local Taxation will be introduced by Mr. *Poulett Scrope*, and another by Mr. *Pigott*, by which the owners of houses under the value of 8*l.* a-year in towns, and 5*l.* in the country, shall be assessed, and not the occupiers.

Mr. *Pusey* has continued his notice of a Bill for the Improvement of Agricultural Tenant-Right in England and Wales.

Lord *John Russell's* Bill for removing the remaining Disabilities of the Jews has been read a first time, and stands for second reading on the 7th February.

The Roman Catholic Relief Bill, introduced by Mr. *Anstey*, was read a second time, and the committee appointed for the 16th Feb. Mr. *Law* will move an amendment for postponing the committee for six months, or in other words, to negative the bill.

On the 15th February, Mr. *Ewart* will propose his Bill for the total repeal of the Punishment of Death.

Lord *Nugent* has given notice for the 10th Feb., to repeal so much of the 2 & 3 Vict. as gives the power of applying the System of Separate Imprisonment to Persons before Trial; and on the same day Lord *Morpeth* will bring forward his Bill for Promoting the Public Health.

A Bill for an Appeal in Criminal Cases will be brought forward by Mr. *Ewart*.

Mr. *Grantley Berkeley* has taken charge of a Bill for amending the Law relating to Coroners.

Mr. *Charles Pearson*, the City Solicitor, and member for Lambeth, has already commenced his intended measures for the reform of the Criminal Law by giving the following notices :—

"A Bill to enable a Magistrate sitting at either of the Metropolitan Police Courts to indorse on the warrant of commitment, in certain cases of felony and misdemeanor, a certificate that in his judgment it is not necessary to prefer an indictment against the prisoner, and in such cases to empower the clerk of the court at which such prisoner is to be tried, to file an information which shall have the same effect as if an indictment had been found by the Grand Jury; and also to make provision for supplying the prisoner, free of expense, with a copy of the information, of the depositions whereon it was founded, and with such subpoenas for witnesses as he may require.

"A Bill to regulate the practice and charges of solicitors defending prisoners at the Metropolitan Police Courts, and at the several courts to which such prisoner may be committed for trial; and to provide for the speedy and cheap taxation of Bills of Costs therein by the officers of the court by whom the costs of prosecutions are now allowed.

"A Bill to amend the Laws which authorise the acquittal of prisoners on the ground of insanity, and to make suitable provision for their subsequent detention and treatment.

"A Bill to provide profitable employment for convicted prisoners, with scales of diet suited to their sex, age, and strength, and to the amount of their labour; also to empower Courts of Criminal Judicature, instead of imprisoning offenders for fixed periods of time, to pass sentences of task labour proportioned to their offences, so as to diminish the cost of gaols and induce prisoners to work out their sentence by motives that excite and means that confirm those habits of industry and self-control which will qualify them on their discharge to gain their living without returning to criminal pursuits.

"A Bill to declare and explain the unaltered Common Law of England, which pronounces, as a rule, that children under the age of discretion are *incapaces doli*; and also, to make such provisions for the treatment of Juvenile Offenders in conformity with the principle and spirit of the Common Law, as experience in this and other countries has proved that the existing state of society requires."

Lastly, Mr. *Hindley* has given notice of a bill for amending the Law of Sunday Trading.

Such is the state of the present measures before parliament for the alteration or amendment of the law, so far as they have either been introduced or notified. More remain behind. There will be no lack of employment for the legal critic; and, so far as lies within our power, we shall not be wanting either in a warning voice or constant vigilance.

## ALTERING THE TIME

FOR HOLDING THE

### EPIPHANY QUARTER SESSIONS.

A BILL has been proposed and brought into the House of Commons by Mr. *Packe* and Mr. *Bankes*, "to alter the time for holding the Epiphany Quarter Sessions." After reciting in the preamble the provision of the 1 W. 4, c. 70, directing that the General Quarter Sessions shall be holden in the first week after the 11th October, in the first week after the 28th Dec., in the first week after the 31st March, and in the first week after the 24th June, and stating that the time of holding the General Quarter Sessions should be altered in part, the bill repeals so much of the provision above cited as requires justices to hold the General Quarter Sessions in the first week after the 28th of December, and then proceeds to enact—

That from and after the passing of this



act, the justices of the peace in every county, riding or division, who by the said recited act are directed to hold their general quarter sessions of the peace in the week next after the 28th day of December, shall hold such last-mentioned sessions in the week next after the 31st day of December; and that all acts, matters and things done, performed and transacted at the time appointed by this act for the holding of the said last-mentioned general quarter sessions of the peace, shall be as valid and binding to all intents and purposes, as if the same had been done, performed and transacted at the general quarter sessions of the peace, holden at the time limited for the holding thereof by the said recited act.

The effect of this enactment, is to postpone the commencement of the Quarter Sessions from the week next after the 28th of December to the week next after the 31st December; and the object is, to preserve magistrates, professional men, jurors, prosecutors, and witnesses from the necessity of quitting their homes and resorting to the county town at which the sessions are holden during the Christmas week. When Christmas day falls upon a Saturday, as in the present year, the inconvenience it is proposed to correct is not felt, for the Quarter Sessions cannot be holden until the 3rd day of January, but when Christmas-day falls on a Tuesday or Wednesday, the sessions, under the existing law, commence on the following Monday, and those days are broken in upon, which for centuries have been devoted by the people of this country, particularly in the rural districts, to recreation and domestic festivity. We understand the change was suggested, in the first instance, by some country attorneys of influence and respectability, and that it is favoured generally by the magistrates who give their attendance at the Quarter Sessions. Under those circumstances, we regret to learn that the proposed alteration is objected to by a small portion of the junior Bar, who conceive that the postponement of the Epiphany Sessions to the week after the last day of December may possibly interfere with their return to London by the 11th January, the first day of Hilary Term. We can conceive a coincidence of circumstances which would render such a result possible. It is not likely to occur frequently. It is far from our intention to suggest that the interest and convenience of the junior Bar, or of any portion of the Bar, is to be disregarded in this or any other particular. It is much to be lamented if it turns out that a change decidedly convenient to the public and the other branch of the profession, should be inconvenient to any portion of the

Bar. We are disposed to think, however, that the importance of the matter, in the estimation of those thought to be peculiarly affected, is greatly exaggerated. The business at sessions has been so very much diminished by a succession of legislative changes, that it has ceased to be regarded generally by the Bar, as a source of emolument or distinction. This, we readily admit, is to be regretted upon many grounds, but the fact is unquestionable. Moreover, the establishment of District Bankruptcy Courts, and subsequently of the County Courts, has already gone far to create in many localities, what may be called a provincial Bar, consisting of gentlemen who reside permanently in the county. We understand that in one county, there are no less than sixteen practising barristers, constantly residing, and of course attending the local courts of every description in which barristers have audience, and that the number is expected speedily to be increased. It is quite clear, that a barrister resident in the country must regard the proposed change precisely as it is regarded by the magistrates, country solicitors, and others, who have suggested it. The number of barristers practising at sessions, whose business requires their attendance in London during the first four days of term, is not considerable, and upon a balance of the convenience and inconvenience which would arise from the proposed alteration, we are satisfied they would be the first to admit, that their personal views ought not to stand in the way of an arrangement deemed by other interests as an improvement.

#### CONSTITUTION OF THE ECCLESIASTICAL COURTS AT DOCTORS' COMMONS.

THE sober quietude of Doctors' Commons was last week disturbed by an explosion the noise of which has excited attention beyond the limits of that dull region. This accident may not be unproductive of benefit to the community, if it induces attention to the constitution of the Ecclesiastical Courts, a subject which—partly perhaps from indifference, and partly from disgust—seems to have obtained a very inadequate share of consideration from those who advocate sweeping changes in other institutions connected with the administration of justice, in which the necessity for reform is not quite so apparent.

The cause, in which the proceedings we are about to advert to occurred, was one of



those peculiar to the Ecclesiastical Courts. A suit is brought by a gentleman of family, station, and property, against a wife and mother—a lady of birth, education, and fortune—for what is called “a restitution of conjugal rights.” This assertion of rights on the part of the husband is met by the wife charging him with cruelty, adultery, and far worse offences; all of which imputations are solemnly denied by the husband, and the wife in her turn is charged with having a violent and ungovernable temper, with the habitual use of indelicate language, and with being a party to the most infamous fabrications for the purpose of ruining her husband. Parents, relatives, friends, and servants—“hearts so lately mingled”—are all arrayed at one side or the other, and become witnesses for the parties respectively, to support or contradict those dreadful imputations; and are in all in turn themselves made the subject of the most disparaging and odious insinuations, with the view of affecting their credibility and impugning their motives. In such a conflict, as may be supposed, the worst feelings and passions of the human heart are developed. The amenities of life are trampled upon, its charities forgotten, and scurrility, hatred, and malice, would seem to dictate all that is said, and to suggest everything that is done.

This cause, pregnant with so much that is painful and revolting, is entitled *Geils v. Geils*, and has been for a considerable period pending in the Arches Court of Canterbury, of which, as most of our readers are aware, the venerable Sir Herbert Jenner Fust is judge, and in which court Dr. Jenner, the son of the judge, and Dr. Jesse Addams, are distinguished advocates. Dr. Jenner is the leading advocate for the husband (Mr. Geils,) and Dr. Addams for the wife. On Friday, the 17th inst., in the course of Dr. Addams's argument on behalf of Mrs. Geils, the episode intervened to which we are about to call attention, and the narrative of which we copy from the report that appeared in the *Times* of Saturday last.

The Judge, in reference to aspersions said to have been cast upon Mrs. Geils out of court, is reported to have said—

“I know not where the aspersions come from, but I know that aspersions have been cast upon the court itself. I have, however, nothing to do with such aspersions; but I think there have been aspersions in court as to what has been done in this case. I think Dr. Addams said he had drawn the pleas and interrogatories without any communication with the proctor of Mrs. Geils?”

“Dr. Addams.—Certainly.

“Sir H. J. Fust.—I should wish to refer to one or two interrogatories which have been put to Mrs. Geils and Mrs. Nepean.

“Dr. Addams.—They were all drawn personally by myself, without any communication with the proctor in the cause.

“Sir H. J. Fust. As to aspersions out of court, I think the court has no reason to complain; but of the suggestions in court. I will read the suggestions in the interrogatories before me, and I think at least the public should know what those suggestions are.

“Dr. Addams.—Certainly; I drew them every word.

“Sir H. J. Fust then read the 67th interrogatory:—‘Ask each witness, has not Mr. Nepean some, and what family connexion, both with the proctors and counsel (or one of them) who are conducting this suit on the part of the producent, and with the judge in whose court it is depending; and upon your solemn oath has not the producent been buoyed or buoyed himself up (of course most fallaciously) with the prospect of its successful issue as resulting or likely to result from such connexion? Will you upon your solemn oath deny, that you yourself have repeatedly heard, or have sometimes heard (or will you positively swear that you never have heard,) the producent refer, either directly or indirectly, to the connexion aforesaid as the ground or one of the grounds whereupon he relied for a sentence in his favour in the result of this suit? If you admit having heard the producent express himself to the effect interrogate, set forth the particulars—how you have heard him express himself to that effect, and what say in relation thereto? Is the influence of a strong over a weak mind not instanced in that of his said brother-in-law over the producent, according to your sense and apprehension? If the ministrant has ever likened the producent and his said brother-in-law to Faust and Mephistophiles respectively, is the comparison inapt to your thinking (supposing always that you know anything of the play, original or translated, in which Faust and Mephistophiles are characters)? Is not the said Mr. Nepean, however much of the gentleman he can be when he chooses, the reverse in his ordinary conduct and conversation? Is he not in the habit of attending boxing matches and intimate with several of the notorious boxers of the day, a Jim Burn, for instance, whose place he frequents when in London? Does he not also make a point, when he can, of seeing public executions (hangings) and such exhibitions? Is he not an adept in the use of slang language of every description? Upon your oath, used he not to teach (will you swear that you have never heard him teach) the ministrant's eldest daughter (‘the kid,’ as he used to call her) to say ‘damn, damn,’ as soon as she could articulate? Had not the ministrant latterly, for such or other reasons, a strong aversion, and which she took no pains to conceal, to the said Mr. Nepean, that at first knowing him, and for some time after his great admirer, still, however, at all times conducting

herself towards the said Mr. Nepean with all outward civility? Will you swear that the facts, all, or any, or either of the facts interrogate, were any, and if yea, how other than as interrogate? Ask both the witnesses, did not Mr. Jenner, the proctor, attend the execution of the requisition for the examination of witnesses on the ministrant's allegation, to wit, at Glasgow, in the months of March and April in last year? and was he not at such time a guest at Dumbuck, and for how long? Who else of that name, and for how long, was a guest at Dumbuck at or about that time? Was he also a son of, or how otherwise connected with or related to the judge in whose court the present suit then was and (having been remitted thence from the Judicial Committee of the Privy Council, into which it was taken on an appeal from a grievance) still is pending, as you know or believe?

"The answers of Mrs. Nepean to the 67th and 68th interrogatories were as follows:— 'Mr. Nepean's uncle is married to a sister of the proctor, and of the leading counsel conducting the suit on the part of the producent, the daughter also of the judge in whose court it is depending. Upon my solemn oath the producent has not, to my knowledge, and as I am sure, been buoyed, or buoyed himself up, with the prospect of its successful issue as resulting, or likely to result, from such connexion. His only trust is, I believe, in his own innocence. He, I am sure, would be well aware how fallacious such an expectancy would be of a successful issue resulting from the source suggested in the interrogatory. I will, upon my solemn oath, deny that I myself have repeatedly heard, or sometimes heard, (I will positively swear that I never have heard,) the producent refer either directly or indirectly to the family connexion interrogate (if such it can be called) as the ground, or one of the grounds, whereupon he relied for a sentence in his favour in the result of this suit. I do not know any person who has less influence over my brother, the producent, than Mr. Nepean. From the extreme openness of Mr. Nepean's character he is a most unlikely person to acquire influence over the mind of the producent, or any one else. My knowledge of the play in which are the characters of Faust and Mephistophiles is, I suppose I should say, derived from the translation. Mr. Nepean read it to me from the German, translating it to me as he did so. I should say that if ever there were two persons bearing less resemblance to the characters of Faust and Mephistophiles than any I could mention, it would be Mr. Nepean, and the producent. If the ministrant has ever likened them to those characters she must have read the play from a very bad translation, or did not understand the original language, if she read it in that. I do recollect, now, to have heard Mr. Nepean say that he was sure she did not understand what she read in German. Mr. Nepean is not, in his ordinary conversation, the reverse of gentlemanlike, and I must say that if the persons from whom these questions

emanate, judging from the spirit of prejudice, to say the least of it, in which they are put, are ready to allow that he can be gentlemanlike, the exception may very fairly be accounted for in their prejudice. Never since his marriage (for six years past, that is) has he attended a boxing match. I do not know that he is intimate with several notorious boxers. He never talks to me about it, if he is. He is fond of manly sports, and thinks it the duty of an Englishman to keep them up. He likes 'Jim Burn,' I believe, but it is not the fact that he frequents his place in London. I can only answer for his being there on one occasion since our marriage. He does not make a point when he can of seeing public executions (hangings) and such exhibitions. I am not aware that he is an adept in the use of slang language. I never heard him do so except to the extent that is common with gentlemen. It used to be a laugh with us all, the ministrant no less than the rest of us, that the first words her eldest child could articulate were 'dann, dann,' or something resembling that sound, but I will swear that she was never taught it by Mr. Nepean; there is not a pretence for saying such a thing. He never did and never would have done it, I am sure. He generally called the child the 'kid.' I have no reason to believe that the ministrant ever resented his so doing. She used to call the child by that name as much as any one else. I am not aware that she entertained any aversion to Mr. Nepean. She concealed it if she did. To the last she conducted herself towards him as if she liked him. I have answered the questions on oath as put to me. I swear to the truth of what I have stated. Mr. Jenner did attend the execution of the requisition for the examination of witnesses on the ministrant's allegation at Glasgow last year, in March and April, I believe it was. He came over and stopped at Dumbuck from Saturday to Monday evening on one occasion, during the time his brother, Mr. Arthur Jenner, was a guest at Dumbuck. At that time, also, he stopped two or three weeks. He is also a son of the judge of the court in which this suit is pending. He did not come to Scotland upon our invitation, but as he was here we invited him to Dumbuck, and as he wanted to see the country he stopped.'

"The answers of Mrs. Colonel Geils were as follows:— 'Mr. Nepean's uncle is married to a sister of the producent's proctor and leading counsel, the daughter of the judge in whose court the present suit is depending. Upon my solemn oath the producent has not been buoyed or buoyed himself up with the prospect of its successful issue as resulting, or likely to result, from such a connexion. My idea would rather be, that the circumstance of there being such a connexion (if for a moment any one could be so absurd as to suppose that it would effect the issue one way or the other) would rather operate to his disadvantage than otherwise. I will, upon my solemn oath, positively swear that I never have heard the producent refer,

either directly or indirectly, to the connexion aforesaid as the ground, or one of the grounds, whereupon he relied for a sentence in his favour, or upon any grounds but the justice of his cause. I am sure that he would, in common with any other rightly thinking person, have felt that the entertaining such an idea would have been an insult to the gentlemen alluded to. The influence of a strong over a weak mind is not, I consider, instanced in that of his brother-in-law, Mr. Nepean, over the producent. On the contrary, I think, and so will every impartial person, that the producent has the stronger mind of the two. My knowledge of the play in which the characters of Faust and Mephistophiles occur is derived from a translation. It strikes me that the comparing the producent and Mr. Nepean with those respective characters would be inapt in the greatest degree. I do not detect the slightest resemblances. I never saw Mr. Nepean otherwise than gentlemanly, both in his conduct and conversation. I believe that formerly he did use to be in the habit of attending boxing matches, but that was prior to his marriage only. I believe,—I am not aware that the fact is as suggested, that he is intimate with several of the notorious boxers of the day. I believe he is an acquaintance of the interrogate, 'Jim Burn.' I remember that he went to see him when we were in town. I must admit his acquaintance with 'Jim Burn,' but not the intimacy. I never knew him to go to see public executions (hangings as interrogate) or such exhibitions. I am not aware that he is an adept in slang language, though what that means exactly I am not aware. He never used it before me, certainly. I will swear that I never have heard him teach the ministrant's eldest daughter to say 'Damn, damn.' I am sure the suggestion that he did so is a great falsehood. I never heard him call the child 'the kid,' but Kalo, the pet name we all gave her. I had no reason at any time to believe that the ministrant entertained a strong aversion to the said Mr. Nepean. It appeared to me that she behaved to him as she did to every one else, just according to the humour she happened to be in. The last time she was here she appeared to enjoy his society. There was never anything in his conduct that I witnessed or knew of to induce in her anything like aversion to him at any period. It seemed to me that she behaved to him just according to the humour she was in. I will swear to the facts to be as I have answered respecting them. Mr. Jenner, the proctor, did attend the execution of the requisition for the examination of witnesses on the ministrant's allegations at Glasgow, in the months of March and April last year. He spent one Sunday here. He came late on the Saturday, and left early on the Monday: this visit, I should say, was to Mr. Nepean. His younger brother, Mr. Arthur Jenner, was a guest also at Dumbuck at that same time. He came with his brother, and stayed a few, I don't exactly recollect how many days, after his brother had left. He remained to shoot

ducks with Mr. Nepean on the river. He also is a son of the judge of the court in which this suit was and is depending."

"I want to know whether any observations are to be founded upon these suggestions, or if the suggestions are disclaimed by counsel?"

"Dr. Addams. In the first place, I say that those interrogatories were drawn by myself, every word. I had not only reason to believe, but to know, that Mr. Geils had expectations of success in this cause from his connexion with the judge; I knew that the cause was conducted in the office of Messrs. Jenner and Dyke, one being the son and the other a relation of the judge; that one of his advocates, Dr. Jenner, was another son of the judge: that Mr. Nepean was a family connexion of the judge, and that two other sons of the judge had been guests of Mr. Geils at Dumbuck, and one of them a visitor there for several weeks. It is so much the constitutional doctrine of the law in this country, that formerly a judge of assize could not hold a court of assize in his native county, on a supposition that the connexion might bias his feelings, though he was not a single judge, determining questions upon written evidence, but upon evidence taken *voir dire*, and with the interposition of a jury. In the Courts of Queen's Bench, Common Pleas, and Exchequer, when a case comes before the court in which one of the judges has been counsel, he declined to sit. On the appeal, in the case of Mr. Wood's will, before the Judicial Committee of the Privy Council, Sir F. Pollock challenged Dr. Lushington, as a member of the committee, merely because he had been counsel in an early stage of that case, and the exception was allowed; and I happen to know that if the exception had not been allowed, Sir F. Pollock, and Sir T. Wilde, the other counsel, would have thrown their briefs upon the table and refused to argue the case. Such is the constitutional jealousy of the administration of the law in this country, and I contend that I had a right to put in evidence the connexion of Mr. Geils, one of the parties in the cause, with the judge, the counsel, and the proctor, and I am ready to justify what I have done.

"Sir H. J. Fust. I only wish you had retained this case before the Judicial Committee.

"Dr. Addams. I endeavoured to do so; and that was partly my object in appealing from this court on the admission of Mr. Geils' allegation, in order that the cause might be retained by the Judicial Committee, and I urged it to the utmost; but the committee made a precedent for the first time; and, although both parties prayed that the cause might be retained, they refused.

"Sir H. J. Fust. What I complain of is, that you do not make your objection openly, and fairly, and candidly; that you put in a parenthesis, 'of course, most fallaciously;' that is the suggestion I complain of. The public should know the situation in which the court is placed. In the Judicial Committee, or the courts of law, one judge may withdraw; but could I refuse to accept the letters of request

in this case, or decline to sit and hear the cause?

"Dr Addams. All I can say is, that it is an unfortunate state of things, even if it occurred only once; but it is of perpetual recurrence; I see a phalanx against me which quite oppresses me. I have borne it a long time."

We have been so anxious to give the report of this extraordinary scene without curtailment, that we have allowed ourselves little space for a comment upon it. It is impossible to peruse it without feeling that it furnishes abundant materials for comment and serious reflection. The distant family connexion which appears to exist between the learned judge of the Arches Court and the party promoting the suit, strikes us to be a matter of the least importance. The circumstance, that persons so closely connected with the learned judge are concerned professionally in the cause which he is judicially to determine, seems to involve far more serious considerations. The scope of the examinations, and the place and manner in which they are taken, as exemplified in the extract we have given, also suggest grave doubts as to the justice and expediency of continuing such a system of procedure. Giving Dr. Addams all the credit to which he is fairly entitled for manfully bringing these delicate but important questions before the public and the profession, and taking upon himself the undivided responsibility attached to such a proceeding, we venture to doubt whether the evil—aggravated as it may be by adventitious circumstances—does not lie deeper than he seems to comprehend, or may possibly be disposed to admit. It seems, to say the least, inconvenient and anomalous, that upon the most trying occasions, when feelings and character are peculiarly involved, parties are necessarily forced to discard those in whose professional knowledge, ability, and integrity, they repose in the confidence founded upon experience, and should be driven to resort to professional advisers, who, however capable and respectable as individuals, cannot, from the limited sphere to which their practice has been confined, be so well known or so much appreciated by the public, as those who practise in other branches of the legal profession. We shall take an early opportunity of returning to the subject.

#### NOTICES OF NEW BOOKS.

*A Treatise on the Conflict of Laws of England and Scotland.* By JOHN HOSACK, of the Middle Temple, Barrister-at-

Law. Part First. W. Blackwood & Son. London and Edinburgh. 1847. Pp. 317.

THIS Treatise, evidently suggested by the larger works of Mr. Justice Story and Mr. Burge, is confined to the laws of England and Scotland, but is undoubtedly an acceptable addition to legal literature. Our busy lawyers are in general but little acquainted with the state of the law in the northern part of the Island. Doubtless the most interesting, as well as the easiest, method of studying the code of another country, is by placing it in juxtaposition with our own. Mr. Hosack, the present author, has undertaken the task of presenting a view of the laws of Scotland, so far as they stand in conflict with those of England.

This part of the Treatise comprises:

1. General rules of international law.
2. Domicile as it affects civil status and succession.
3. Civil status—Legitimacy.
4. Civil status—Minority and guardianship, lunatics and aliens.
5. The marriage contract.
6. Effect of marriage on the property of the husband and wife.
  - 1st. Real property.
  - 2nd. Personal property.
- 3rd. Effect of marriage on the person and personal acts of the parties.
- 4th. Marriage settlements.
- 5th. The law which governs the rights of married persons in the absence of an express contract.
- 6th. Separation deeds.
7. Divorce.

The author's introductory chapter is comprehensive and able. After touching on the early history of the laws of both parts of the kingdom, he thus proceeds:—

"It does not appear that the systematic study of the Roman law was directly encouraged by any English prince except by Edward the First; \* and it is probable that it gradually declined after the death of that able legislator, and was finally discontinued about the beginning of the reign of Edward the Third. <sup>b</sup> The administration of justice and the forms of procedure in the different courts had by that time acquired a great degree of certainty and regularity; and it seems to be now generally admitted that the cultivation of the Roman law for the space of two centuries, although attended with less striking results than in other countries, exercised an important influence over English jurisprudence during that nascent

\* Selden, Dissert. ad Fletam, cap. 8, § 2; Equitable Jurisdiction of the Court of Chancery, by George Spence, Esq. vol. i. p. 131.

<sup>b</sup> Selden, Dissert. ad Fletam, cap. 8, § 5.

period of its history. That influence is still recognised by the Ecclesiastical and Admiralty Courts, and it has also been continuously felt in the Courts of Equity from the period of their first formation down to the present time.<sup>c</sup>

"The early history of the Roman law in Scotland is apparently involved in considerable obscurity; but it is probable that it did not become an object of general study there until after it had been in a great measure abandoned in England. Its results in Scotland, however, were much more important. During the interval between the first formation of the Court of Session in 1425, until its final constitution in its present form, on the model of the Parliament of Paris, in 1532, there is ample evidence of the authority obtained by the civil law. During this period we find that it was recognised by various Parliaments, as the common law of the kingdom,<sup>d</sup> as it had previously been in France and other countries; and to its influence among other less striking results, may be attributed, during the same interval, the discontinuance of inquests or trial by jury<sup>e</sup> in civil causes, which have been only recently and partially restored.<sup>f</sup>

"The changes necessarily arising during successive ages, under two unconnected jurisdictions must be added to the causes which have led to various differences between the laws of the two kingdoms. Among these the most remarkable perhaps is the origin and growth of the Courts of Equity in England, which are in many respects peculiar to the jurisprudence of that country; for while other States seem gradually to have adapted their judicial system to the exigencies of society, the strict adherence of the courts of common law to their own maxims, and that reverence for precedent which has generally characterized their administration of the law, rendered the establishment of a separate equitable jurisdiction indispensable in England before the termination of the fourteenth century."<sup>g</sup>

He then adverts to the progress of Jurisprudence on the Continent, and observes that

"From the greater infusion of Roman law into the jurisprudence of Scotland, there is found in the earlier decisions of the Court of Session a much more frequent reference to foreign authorities than at a corresponding period in England. The doctrines of international law, however, do not appear to have made much real progress in the former country before the middle of the last century. The publication of

the ingenious treatise of Lord Kaimes<sup>h</sup> about that time, shows indeed that the subject had attracted attention; but the principles which were then allowed to regulate the most important questions of mixed rights, were then but ill-defined—a circumstance proved by the remarkable fluctuation which the law of international succession underwent after that period, and to which it will be necessary to refer in another part of this Treatise. For practical purposes, indeed, this branch of law may be said to be of simultaneous growth in the two countries—for the jurisprudence of Scotland appears to be in many respects indebted to the same eminent jurists who first established its principles in the sister kingdom.

"But although the labours of the learned, powerfully aided as they have been by judicial skill, have cleared away many difficulties and fixed numerous rules for the adjustment of conflicting laws, various questions, involving interests of deep importance to society, still remain in a state of perplexing uncertainty. There is, however, one remarkable feature in the present age, by means of which it is possible that these evils may be eventually diminished, if not altogether removed. The unprecedented facility for intercourse between nations will, in all probability, render questions of foreign and conflicting laws of much more frequent occurrence. The necessity of determining these upon equitable principles must lead to a more extensive acquaintance as well with the writings of the best authorities, as with the practice of foreign States, and an approximation may at length be made to that universal system of international comity, which it is the ultimate object of this branch of jurisprudence to establish."

As a topic of some general interest in both countries, and bearing on professional practice, we may extract the section in the chapter on the Law of Marriage, regarding *Separation Deeds*.

"Although the English law looks with great disfavour on any agreement which has for its object the relief of the parties from the duties incident to the conjugal relationship, yet, when the husband and wife have come to a resolution to live apart, the courts, both of law and equity, have, in many instances, recognised the validity of agreements made for this purpose.<sup>i</sup> This is usually done by the husband covenanting with trustees appointed on behalf of the wife, that he will provide certain funds for separate maintenance, the trustees covenanting in return to indemnify the husband against the debts of the wife, and that she shall release all claims of jointure and dower. The deed also in general contains a clause in which each party covenants

<sup>c</sup> Spence—Equitable History of the Court of Chancery, Part 2, book 4, chap. 8.

<sup>d</sup> See Sir George Mackenzie's Institutes, tit. 1, Observations on Acts of Parliament, cap. 1.

<sup>e</sup> Hallam's Const. Hist., vol. iii. p. 414; Chalmers' Caledonia, book 4, chap. 4.

<sup>f</sup> 55 Geo. III. cap. 42.

<sup>g</sup> See Spence—Equitable History of the Court of Chancery.

<sup>h</sup> Principles of Equity.

<sup>i</sup> *Westmeath v. Westmeath*, Jac. Rep. 126, 1 Dow. & Clark, 519; *Jee v. Thurlow*, 2 Barn. & Cress. 547; *Wilson v. Mushett*, 3 Barn. & Adol. 752; *Jones v. Waite*, 1 Bing. N. C. 656.

not to molest or interfere with the other, and not to sue for restitution of conjugal rights. Under such an agreement the wife is entitled to receive her separate allowance so long as the separation continues, and while she observes the covenant agreed upon; nor will she forfeit that claim by the commission of adultery.<sup>1</sup>

"Although, however, the law allows provision to be made for a separation already decided upon, and which is immediately to take place, it will not recognise any agreement, the effect of which is to provide for the contingency of a future separation; because such an agreement would have a manifest tendency to bring about that event contrary to the policy of the law.<sup>2</sup> It is also to be observed that a married woman, though thus separated from her husband, is not thereby divested in other respects of the disabilities incident to the *status* of coverture.<sup>3</sup>

"The policy of the law of Scotland is equally adverse to the voluntary separation of husband and wife; and contracts entered into for this purpose were formerly deemed void *ab initio*, as tending entirely to defeat the objects of marriage."<sup>4</sup> But by later decisions they have been held effectual, as being granted by the husband in consequence of his natural obligation to maintain the wife. But they are revocable, and accounted actually revoked, as soon as he shall offer to receive her again into his family.<sup>5</sup> And if no separate allowance has been agreed upon to be paid to the wife, the court will not supply the deficiency. It has been held, accordingly, that a wife cannot maintain an action for aliment against her husband<sup>6</sup> during their voluntary separation, because the husband might put an end to it immediately by obliging his wife to live with him. In another case, it was laid down that the legal rule as to the power of revocation, in either party, rested on the ground that separation was contrary to the duties of the married state, the object of which was the adherence of the parties to each other; that, for the attainment of this object, the law allowed either party to revoke expressly, and even held the contract of separation voided, *ipso facto*, if they actually came together again. But it was observed by the court, in deciding that case, that the rule would not apply where the parties would not, or could not, live together; that supposing, for example, one party revoked, but yet refused adherence, such a revocation seemed to receive no support from the law. Upon these principles, it was held that a voluntary contract of separation was not revocable by the wife after the death of her husband; and that as little so was an exclusion therein contained of the wife's legal provisions in the

event of the dissolution of the marriage, though these were more valuable than the provisions of the contract."<sup>7</sup>

The volume concludes with some general remarks on the state of the Law with regard to *Divorce*, which we think are deserving of attention.

"From a review of the foregoing cases it will be seen, that provided the parties are within the jurisdiction, the courts in Scotland will entertain actions of divorce, and pronounce decrees *à vinculo matrimonii*, without reference to the permanent domicile of the parties, or to the law of the country where the marriage may have been contracted. It would seem, however, to be difficult to define the precise circumstances which are held to be sufficient to give the courts jurisdiction. Dr. Story considered that the presence of one of the parties within the kingdom, and proof of the fact of adultery at home or abroad, were sufficient for this purpose;<sup>8</sup> but whatever opinion may have been entertained upon this point formerly, it is clear, from the decision in *Ringer v. Churchill*,<sup>9</sup> that this definition will not hold good in all cases. Where the complaining party is a native of Scotland, the circumstances alluded to may, in certain cases, be held sufficient; for it may be inferred from several of the preceding decisions, that fewer circumstances will be requisite to give the courts jurisdiction when the parties are natives of Scotland, than when they belong to another country.

"When the parties are inhabitants of a foreign country, the *locus delicti* would seem to be a matter of material importance. The line of reasoning adopted by Lord Meadowbank, when the question of jurisdiction first became the subject of prominent discussion, proceeded entirely on the ground that parties temporarily resident in Scotland were amenable to the law of that country, and that the violation of the marriage vow there must be attended with the same consequences whether the parties were foreigners or natives, as both were equally subject to the law. This opinion, as we have seen, was confirmed by a large majority of the Court of Session in 1816, and it has been since recognised in the more recent cases of *Oldaker v. Goldney*<sup>10</sup> and *Jenner v. Crofts*.<sup>11</sup> It will be found, indeed, that in all the cases cited in the preceding pages where the parties were English and where a divorce was obtained, Scotland was alleged to have been the *locus delicti*.

"The main objection to the jurisdiction of the Scottish Courts founded on a temporary domicile, is that it may enable the inhabitants of other countries to evade the laws of their real domicile, thereby occasioning a perplexing confusion of rights and duties, and seriously affecting the interests of third parties; and this objection is not removed by the circumstance

<sup>1</sup> *Jee v. Thurlow*, 2 Barn. & Cress. 547; *Baynon v. Batley*, 8 Bing. 256.

<sup>2</sup> *Durant v. Tittley*, 7 Price, 577; *Hindley v. Marquis of Westmeath*, 6 B. & C. 200.

<sup>3</sup> *Marshall v. Rutton*, 8 T. R. 545.

<sup>4</sup> Feb. 11, 1634, Drummond Dict. 6152.

<sup>5</sup> *Livingston*, Dict. 6153.

<sup>6</sup> *Bell*, 22nd Feb. 1812, Fac. Coll.

<sup>7</sup> *Palmer*, 25th Jan. 1810, Fac. Coll.; *Ersk. Inst. B. 1, tit. 6, n. 30, 31, note*; *Stair, B. 1, tit. 4, n. 22, note*. <sup>8</sup> *Conflict of Laws*, p. 171.

<sup>9</sup> 2 D. B. & M. 2nd Ser. 307.

<sup>10</sup> 12 S. & D. 468.

<sup>11</sup> 2 D. B. & M. 342.

of Scotland happening to be the *locus delicti*, for that may be brought about by a species of tacit collusion between the parties, either of whom might be induced to commit a breach of the marriage vow there for the sole purpose of obtaining a divorce.

"The decisions in England, so far as they have hitherto gone, may be held to adopt the *lex loci contractus* as the rule to be followed in questions relating to the dissolubility of marriage; the opinion of the judges in *Lolley's case*, the remarks of Lord Redesdale, already referred to in *Tovey v. Lindsay*, and the more recent decision of *McCarthy v. De Caix*," all seem to warrant this conclusion.

"But it is only the *lex loci contractus* of England, not that of other countries, which these authorities may be said to have hitherto recognised; and this circumstance may lead us to inquire how far the rule is capable of more extensive application. 'It could not be just,' observed Lord Redesdale in the case already referred to, 'that one party should be able at his option to dissolve a contract by a law different from that under which it was formed, and by which the other party understood it to be governed.'

"Assuming, for the present, that this principle should be generally observed, it follows that the courts in England, while adhering to their own *lex loci contractus*, ought equally to recognise that of other countries. But such a doctrine would, it is feared, be found to be altogether incapable of practical application. An Englishman, for example, who had been married in Scotland, might, in accordance with this rule, apply to an English court for a divorce *à vinculo*, on the ground either of adultery or of wilful desertion, *secundum legem loci contractus*; or, if he had been married in Prussia, he might claim to be released from the conjugal obligation on account of any of the numerous causes for which the Prussian code admits of divorce. Again, if he had married in Turkey, such marriage would be no bar to his taking a second wife in England, because the *lex contractus* of the first marriage admits of polygamy; while, on the other hand, if he married in a Roman Catholic state, not even an Act of the British Legislature could dissolve a union which was, by the law of the place, in its nature absolutely indissoluble."

The next volume, or second part of the Treatise, will comprise the Law of Real and personal Succession, Contracts, and Bankruptcy.

#### FIRST REPORT ON PRIVATE BILLS.

THE Select Committee appointed to consider whether any and what Improvement can be adopted in the Mode of conducting Private Business, and who were empowered to Report their Opinion from time to time to the House;—have considered the Matter to them referred, and have agreed to Report the following Resolutions:

1. That the chairman of the committee of Ways and Means do examine all private bills, whether opposed or unopposed, and do call the attention of the house to all points relating thereto which may appear to him to require it.

2. That there be furnished to the chairman of Ways and Means, by the agents, copies of all private bills, copies of all amendments intended to be introduced in committee;—and likewise copies of all bills as amended in committee;—and likewise copies of all amendments made in the House of Lords, and all amendments to the Lords' amendments intended to be proposed in the House of Commons.

3. That the "Examiner of Recognizances," with such assistance as may be found requisite, do aid the chairman of Ways and Means in the discharge of the above-mentioned duties.

14th December, 1847.

[The House adopted this Report, except that in lieu of the "Examiner of Recognizances," the "Counsel to Mr. Speaker" was substituted.]

20th Dec. 1847.

#### BARRISTERS CALLED.

Michaelmas Term, 1847.

##### LINCOLN'S INN.

19th November.

Henry Hill Strettell, Esq., M. A.  
John Stuart, jun., Esq.  
Richard Garth, jun., Esq., M. A.  
Horace Mann, Esq.  
James Bowyer, Esq.  
John Fearenside, jun., Esq.  
Charles Frederick Walker, Esq., M. A.

23rd November.

Andrew Alexander Knox, Esq., M. A.  
William Henry Townsend, Esq., M. A.  
William Henry FitzHugh, Esq., M. A.  
George Augustus Alston, Esq., M. A.  
William Wynne Ffoulkes, Esq., M. A.  
Nassau John, sen., Esq. M. A.

##### INNER TEMPLE.

John Alldin Moore, Esq., M. A.  
Stafford Henry Northcote, Esq., M. A.  
Isaac John Innes Pocock, Esq., B. A.  
Thomas Greenwell, Esq., B. A.  
William Tidd Pratt, Esq.  
Joshua Bird Allen, Esq., B. A.  
Augustus Colin Mackenzie, Esq., M. A.  
William George Coventry, Esq.  
Charles Joseph Wade, Esq.  
Henry Thomas Coles, Esq.  
Henry Thomas Riley, Esq.  
Edward Francis Percival, Esq.

##### MIDDLE TEMPLE.

5th November.

Charles Edward Gee Barnard, Esq.  
Henry Membury Wakley, Esq.  
John Alcock, Esq.  
James Campbell, Esq.  
John Bell, Esq.



Samuel Carter, Esq.  
Shirley Forster Woolmer, Esq.  
William Thomas Bridges, Esq., B.A., Corpus Christi Coll., Oxford.

19th November.

Henry Wiglesworth, Esq., Trinity Coll., Cambridge.  
Thomas Archibald Roberts, Esq.  
John Abel, Esq.  
Charles Bayley Cox, Esq., St. Peter's Coll., Cambridge.  
George Henry Lewis, Esq.  
Thomas Hanworth Rackham, Esq.  
Philip Kingsford, Esq., B. A., St. John Coll., Cambridge.  
James Broun, Esq.  
Henry William Nicholson, Esq.  
Richard George Dax, Esq.  
Daniel Thomas Evans, Esq.

GRAY'S INN.

24th November.

John Stimpson Collett, Esq.  
Walter Charles Urquhart, Esq.  
William Stoate, Esq.  
Thomas Sands Chapman, Esq.

## LEGAL OBITUARY.

1847, Nov. 10.—Benjamin Hall, of 2, Verulam Buildings, Gray's Inn, Solicitor, aged 66. Of the firm of Hall, Mourilyan, and Rowsell. Admitted on the Roll, Hilary Term, 1802.

Nov. 14.—Thomas Maberly, of Colchester, Solicitor, aged 88. Admitted on the Roll, Michaelmas Term, 1783.

Nov. 14.—Robert Pauncefoot, of Lincoln's Inn, Barrister-at-Law, aged 28. Called to the Bar, 21st Nov. 1843.

Nov. 15.—Thomas B. Brooks, of the Inner Temple, Special Pleader, aged 27.

Nov. 18.—Peter Ogier, of Lincoln's Inn, Barrister-at-Law, aged 79. Called to the Bar, 9th May, 1822.

Dec. 1.—Ralph Colley Smith, of Lincoln's Inn, Solicitor. Admitted on the Roll, 15th Feb., 1794.

Dec. 1.—Rathbone Bartlett Roberts, of Lincoln's Inn, Barrister-at-Law. Called to the Bar by the Hon. Society of the Middle Temple, 28th Jan. 1842.

Dec. 3.—Samuel Duckworth, Esq., one of the Masters in Chancery. Called to the Bar by the Hon. Society of Lincoln's Inn, 3rd July, 1813.

Dec. 3.—Richard Ford, formerly of Shrewsbury, late of Great Ormond Street, Solicitor, aged 39. Admitted on the Roll, Trinity Term, 1830.

Dec. 7.—John Gray, Town Clerk of Louth, Solicitor. Admitted on the Roll, Michaelmas Term, 1828.

Dec. 10.—The Hon. C. Burton, at Dublin, Senior Judge of the Court of Queen's Bench, Ireland.

Dec. 17.—Ralph Dunn, of 32, Threadneedle

Street, Solicitor to South Sea Company, (firm Dunn, Wordsworth and Dunn,) aged 86.—Admitted on the Roll, Easter Term, 1795.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Nov. 23, 1847, to Dec. 17, 1847, both inclusive, with dates when gazetted.*

Clayton, James Henry, and John Henry Square, 3, Hare Court, Inner Temple, Attorneys and Solicitors. Dec. 10.

Clowes, John Ellis, Henry Brayley Wedlake, and Ellis Clowes, 10, King's Bench Walk, Temple, Attorneys and Solicitors. Dec. 17.

Cole, Thomas Frederick, and Charles Stokes, Ryde, Ventnor, and Cowes, Isle of Wight, Attorneys and Solicitors. Dec. 17.

Edwards, Charles, and Theodore Bryett, Totnes. Attorneys and Solicitors. Dec. 14.

Gilbert, Thomas Webb, Edward Browne Hooke, Thomas Henry Street, and George Gutteres, 1, Brabant Court, Philpot Lane, Attorneys and Solicitors, so far as regards the said Thomas Webb Gilbert. Dec. 7.

Giles, George, and Netlam John Giles, 32, Lincoln's-Inn-Fields, Attorneys and Solicitors. Dec. 7.

Millard, Joseph Thomas, and Edward Margetts, 19, Tokenhouse Yard, Attorneys and Solicitors. Dec. 10.

Nance, William, and William John Hellyer, Portsmouth and Portsea, Attorneys and Solicitors. Dec. 3.

Partridge, Julius, and William Moseley Tayler, Birmingham, Attorneys and Solicitors. Dec. 7.

Stocks, Michael, and Francis Edwin Macaulay, Halifax, Attorneys and Solicitors. Nov. 26.

Woodgate, William and Frederick West, 40, Gresham Street, City, Attorneys and Solicitors. Dec. 7.

## MASTERS EXTRAORDINARY IN CHANCERY.

*From Nov. 23, 1847, to Dec. 17, 1847, both inclusive, with dates when gazetted.*

Doe, George, Great Torrington. Dec. 3.

Gell, Inigo, Lewes. Nov. 23.

Hardwicke, Eugene, Kidderminster. Nov. 26.

Leighton, James, Montrose. Nov. 30.

Marlow, Thomas, Walsall. Dec. 10.

Templer, Henry Augustus, Bridport. Dec. 14.

Wasbrough, William Dowell, Wantage. Dec. 17.

Whiteman, Alfred, Eastbourne. Dec. 17.

## PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries Act.*

Caparn, Richard, of Holbeach, for the parts of Holland, in the County of Lincoln. Dec. 7.



Jones, Morris Charles, of Liverpool, for County of Chester. Nov. 23.

Mason, Henry Baxter Branwhite, of Werekham, near Stoke Ferry, for County of Norfolk. Dec. 3.

Warden, Thomas, of Bardon, near Taunton, for County of Somerset. Dec. 3.

#### LAW APPOINTMENTS.

The Queen has been pleased, by letters patent under the Great Seal of the United Kingdom, to nominate, constitute, and appoint

Charles Buller, Esq., to be a Poor Law Commissioner in England. Dec. 17.

It is understood that Mr. Buller will be the President of the Board of Commissioners; Mr. Nicholls and Lord Ebrington the Secretaries; and Mr. Lumley, Assistant Secretary.

The late Assistant Commissioners have been nominated "Inspectors" for the same districts to which they were previously appointed.

William G. Hayter, Esq., Q. C. and M. P., is, we understand, to succeed Mr. Buller as Judge Advocate.

### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

*Attorney-General v. Mayor and Corporation of Huntingdon.* Nov. 18, 1847.

CHARITY.—PETITION.—ATTORNEY-GENERAL.

*The court refused to make an order on a petition relating to a charity, because the petition was presented by the relator in his own name, instead of by the Attorney-General on his information.*

THIS was a petition for a reference to extend the scheme of the charity presented by the relator.

Mr. Taylor for the petitioner.

Mr. Wray consented for the Attorney-General.

But Lord Langdale refused to make the order on the petition as it stood, on the ground that the petition ought to be by the Attorney-General on the information of the relator, not in his own name.

#### Vice-Chancellor of England.

*Davis v. Combermere.* Dec. 2, 1847.

TITLE DEEDS.—TENANT FOR LIFE.—INDEMNITY.

*Where an equitable tenant for life of real estates applied for the delivery to him of the title-deeds for certain purposes: Held, that, under the circumstances, they ought not to be parted with, unless an indemnity was given.*

THIS was a motion on behalf of an equitable tenant for life of certain real property, situated at Ruthcullen, in Ireland, for the delivery to him of the title-deeds. The legal estate was vested in trustees residing in Ireland, and the deeds were required in order to show the title of the applicant, and to enforce his right to the rents which the tenant had refused to pay. The deeds were in the custody of other parties in this country.

Mr. Stuart appeared on the motion.

Mr. Bethell opposed it, contending, that in the present disturbed state of Ireland great caution ought to be exercised in providing for the safe custody of the deeds, and that at any

rate they ought not to be delivered up without a proper indemnity being given by the tenant for life.

The Vice-Chancellor said, that as life and property seemed to be in such a precarious state at present in Ireland, it would be very desirable to have an indemnity, and it should therefore be referred to the Master to inquire and state to the court what deeds ought to be delivered up, and what indemnity under the circumstances ought to be given.

#### Vice-Chancellor Knight Bruce.

*Seale v. Buller.* Dec. 3, 1847.

PRACTICE.—WILL OF REAL ESTATE.

*Seemle, that where a will of real estate is to be established, it should not be produced on a later day than the date of the decree in the cause.*

Forster, after the decree had been made in this cause, applied that the will, which was of real estate, and was to be established against the heir-at-law, might be produced, and that the decree might be dated on the day on which it was pronounced, instead of the day on which the will was produced, as the court had suggested.

The Vice-Chancellor said, that the decree might be made as the parties wished, but he thought such a decree would be wrong. A will of real estate was established against the heir-at-law from the day of its production, and therefore the decree ought to be dated on the day the will was established. As however some experienced officers of the court were of a different opinion, the parties might have the decree dated as they desired.

*Gathercole v. Wilkinson.* Nov. 25, and Dec. 1, 1847.

PRACTICE.—SERVICE OF SUBPENA.

*Where a copy of subpoena was inclosed in a letter to the defendant, the receipt of which was acknowledged by him, it was not considered a sufficient service of the subpoena to enable the plaintiff to enter an appearance under the 29th Order of May, 1845.*

THIS was a motion on behalf of the plaintiff for leave to enter an appearance for one of the defendants named Chandler. On a former occasion a similar motion was made, when it was shown that the defendant had left his usual place of residence two months previously, and that it was believed that he was keeping out of the way to avoid, amongst other things, the service of the proceedings in this court; but that motion was refused. Since that application was made, a letter had been sent to the defendant through his father, in which reference was made to the necessary proceedings by advertisement to compel an appearance, and it was said, that if he was desirous of avoiding this annoyance, he might do so by causing an appearance to be entered for him, or communicating his place of residence. In this letter was enclosed a copy of the subpoena. On the 7th of August, a letter, in the defendant's handwriting, was received by the plaintiff's solicitors, in which the defendant acknowledged the receipt of the "letter in closing the subpoena to appear to a bill filed by Messrs. Gathercole against him," and stated that he would attend to it. No further notice was taken by the defendant of the subpoena, and accordingly

H. Clarke now moved, under the 29th Order of May, 1845, for leave to enter an appearance for the defendant. He referred to the 4th Order of the 21st Dec. 1833.,

The Vice-Chancellor said, that for all substantial purposes of justice the defendant had been served, but technically he doubted whether he had been so. He was willing to make the order asked, because he considered that the defendant had been substantially served, but the officers of the court might not consider it sufficient. If, however, they made no difficulty, he would make the order.

\* Dec. 1.—It was stated to the court that the registrars considered the service of the subpoena insufficient, and therefore the motion was refused.

#### Queen's Bench.

(Before the Four Judges.)

Moore v. Allard. Michaelmas Term, 1847.

#### TRESPASS. — PLEADING. — JUSTIFICATION.

*Declaration in trespass alleged that the defendant assaulted and kicked the plaintiff and broke his leg. The defendant pleaded that the plaintiff was misconducting himself in a public-house, and that the defendant turned him out, and because the plaintiff resisted the defendant was compelled to resort to force, and in so doing necessarily committed the trespasses complained of. Replication de injuriâ. The evidence was, that the defendant removed the plaintiff from the house, and at the door a struggle ensued and the leg of the plaintiff was broken. The learned judge told the jury that the question was, whether the defendant was justified in turning the plaintiff out,*

*and that the fact of the broken leg was immaterial.*

Held, that the direction of the learned judge was right, that if the plaintiff intended to claim damages for the broken leg, he ought, after the justification set up in the plea, to have new assigned that injury as a ground of damages, and not having new assigned it, he could not claim anything for that which was in substance a new trespass.

THIS was an action of trespass. The declaration alleged, that the defendant assaulted the plaintiff, and beat and kicked him, and pushed, dragged, and pulled him about, and otherwise ill-treated him, and struck and knocked the plaintiff down and upon the ground, and broke one of the plaintiff's legs, whereby, &c. The defendant pleaded,—1. Not guilty; 2. *Son assault demesne*; 3. That the plaintiff was conducting himself in a disorderly manner in a public-house at, &c., and disturbing the landlord, and also the defendant and other persons then in the house, and because the plaintiff refused to go out when requested by the landlord, the defendant, in aid of the landlord, and to preserve the peace, endeavoured to turn the plaintiff out, and because he resisted and conducted himself violently, the defendant was compelled to resort to force, and in so doing necessarily committed the trespass complained of. Replication *de injuriâ*. The case was tried before Erle, J., at the last summer assizes for the county of Worcester, and the evidence was, that the plaintiff was using violent and abusive language to a person in a public-house, when the defendant got up and removed him out of the house. When they got out of the house some further altercation took place, blows were struck, and the plaintiff's leg was broken. The learned judge told the jurors that they were not to inquire about the broken leg, that it was not involved in the question which they had to decide, which was, whether the defendant was, under the circumstances, justified in turning the plaintiff out of the public-house. The jury found a verdict for the defendant.

Mr. Godson moved for a rule to show cause why there should not be a new trial on the ground of misdirection. The learned judge was wrong in directing the jurors that the fact of the broken leg of the plaintiff was immaterial, and was not to be taken into their consideration on these pleadings. In *Penn v. Ward*,<sup>a</sup> where the defendant pleaded moderate chastisement, the court held, that if the plaintiff at the trial intended to prove excess, he should have pleaded it. In this case the breaking of the plaintiff's leg is alleged in the declaration, and is not a trespass existing at the time the plaintiff was turned out of the house, but succeeding those trespasses which the defendant justifies. It is one of a chain of trespasses which is not justified by merely justifying that which preceded it. *Bush v. Parker*.<sup>b</sup> In *Phillips v. Howgate*,<sup>c</sup> the plaintiff

<sup>a</sup> 2 Cr. M. & R. 338. <sup>b</sup> 1 Bing. N. C. 72.

<sup>c</sup> 5 Barn. & Ald. 220.

complained of a trespass and battery, the plea alleged a justification to both, but the justification to the battery was not proved, the court held the plaintiff entitled to judgment on that part, and that he need not now assign the battery.

*Cur. ad. vult.*

Lord Denman, C. J., delivered judgment in this case. Having stated the pleadings and the evidence, his lordship said:—Upon the issue thus raised the question was, whether the justification was proved, and whether, while the jurors were trying the question of the justification of the trespass, they might lay out of view the consideration of the broken leg, on the ground that that injury to the plaintiff was an immaterial fact with regard to the issue itself. The jury found a verdict for the defendant. The plaintiff had applied for a rule for a new trial on the ground of misdirection, because the learned judge had at the trial told the jury that the breaking of the plaintiff's leg was an immaterial circumstance under the issue as it stood upon the record, and because, he did not leave that matter to the consideration of the jurors when he directed them that if the justification as to the turning out of the house was not established in fact, they must find damages for the plaintiff, but that if they considered it established, then on the pleadings as they now stood, the defendant must have a verdict. We are of opinion that there ought not to be any rule in this case, the injury to the plaintiff's leg not being a subject for consideration under the pleadings here, the proper question being confined to this, whether the justification was made out by the evidence. On the issue, such as its form was in this case, the plaintiff was not entitled to lay claim to the verdict. If he intended to claim damages for the broken leg, he ought, after the justification set up in the plea, to have new assigned that injury as a ground of damages, and not having new assigned it, he could not claim anything for that which was in substance a new trespass.

Rule refused.

### Common Pleas.

*Onions, appellant, and Bowdler, respondent.*  
Michaelmas Term, Nov. 18th, 1847.

(Borough of Shrewsbury.)

QUALIFICATION TO VOTE AS OCCUPIER.—  
SUCCESSIVE OCCUPATION.—DESCRIPTION  
OF QUALIFYING PROPERTY.—AMEND-  
MENT BY REVISING BARRISTER.

*The appellant's qualification to vote was in respect of two houses occupied in immediate succession. In the list of voters, however, his qualification was described in the third column as "house in succession," and in the fourth "Butcher Row," the latter being the place where the house last occupied by the appellant was situate. Held, that the revising barrister had no power under the 6 Vict. c. 18, s. 40, to amend the list by*

*adding s, to the word house in the third column, and inserting the name of the place where the first house occupied was situate, in the fourth column.*

JOHN BOWDLER objected to the name of Henry Onions being retained on the original list of 10l. occupiers for the parish of St. Alkmund, in the said borough. The list stood thus:—

| Christian Name of each Voter. | Place of Abode. | Nature of Qualification. | Street, Lane, or other Place in the Parish where the Property is situate. |
|-------------------------------|-----------------|--------------------------|---|
| Henry Onions, Baker.          | Butcher Row.    | House in succession.     | Butcher Row.  |

Henry Onions occupied two houses in immediate succession. It was proved that he had removed from Coleham, in the parish of St. Julian, to Butcher Row, in the parish of St. Alkmund, on the 1st of May, 1847. Both parishes are within the borough. The revising barrister was required to amend the third column by making it "houses in succession," and the fourth by inserting "Coleham;" and he held that he had no power to do so, on the ground that both the qualifying properties occupied in succession should be stated in the list, and he therefore expunged the name. Several other cases were consolidated with the principal one, and the names of the persons in those cases are to be retained on the list of voters in the event of the court holding the decision of the barrister to be wrong.

*Whately*, for the appellant. The list of voters in question is made out by the overseers of the parish, and it is submitted that, under the 40th section of the 6 Vict. c. 18, the revising barrister had the power to amend in the way asked. The 40th section enacts, "that the revising barrister shall correct any mistake which shall be proved to him to have been made in any list, and shall expunge the name of every person whose qualification as stated in any list shall be insufficient in law to entitle any person to vote, and also the name of every person who shall be proved to him to be dead, and wherever the christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted in any case where the same is by this act directed to be specified therein, or of any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall in the judgment of the revising barrister be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted, or insufficiently described, be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list."

*Wilde*, C. J. How do you distinguish this

case from *Bartlett v. Gibbs*, 5 Man. & Gr. 81, Lutw. Reg. Cas. 73, where it was decided that the omission to state in the list, all the premises held in succession, was a misdescription which the revising barrister had no power to amend?

*Whately*. There the qualification was not stated in such a way as to give the party sufficient notice of the change in the qualification, so as to enable him to make an inquiry as to the occupation. But in the present case it is otherwise, for the qualification is expressly stated to be a successive one, namely, "house in succession." In the case of *Flounders v. Donner*, 2 Com. B. 63, 1 Lutw. Reg. Cas. 365, where the omission to state in the list the number of one of the houses held in succession, was held to be a valid objection. *Erle, J.*, says, "It is clear the revising barrister had a right to expunge the name from the list of claimants, if he thought the description insufficient, and if the number of the first house were not supplied to his satisfaction. But if the number were so supplied, then he had the power to insert that number, and it was his duty to do so." In the present case there was abundant evidence to enable the barrister to amend. *Hitchins v. Browh*, Pig. & Rod. 209, 2 Com. B. 25; 1 Lutw. Reg. Cas. 328, was also a strong authority in support of the power of amendment. The description here, pointed sufficiently for all purposes, to a successive occupation, and that it was in respect of two houses.

*Keating* for the respondent. The question raised is really whether the court will overrule the case of *Bartlett v. Gibbs*. There, as here, the subject of the qualification was stated to be a "house," and was that last occupied by the voter; and the only difference between the two cases is, that here the words "in succession" are added to the word house in the third column. Those words, it is submitted, make no real difference, as appears from the judgment of *Tindal, C. J.*, in *Bartlett v. Gibbs*. He says, "We think the legislature intended that the registration list should afford such information of the nature and situation of the premises, in respect of the occupation of which each person claimed a right to vote, as would entitle the other voters to ascertain by inquiry the sufficiency of the occupation and value of such premises. And it is obvious that for such a purpose, in cases of successive occupation, the description of the premises formerly occupied by the claimant would be at least as necessary as the description of the premises still in his occupation, for without such information it might be difficult to prevent surprise and fraud on the one hand, or to avoid groundless opposition on the other." Then as to the power of amendment the judgments proceeds,— "As the whole object of the notice would be defeated if the omission of any part of such qualification could be remedied at the court of revision, we are also of opinion that the addition of the premises &c., would be a change in the description of the qualification not warranted by the provisions of the 40th section of

the statute of Victoria." The case of *Flounders v. Donner* is a totally different case from the present. There the qualification was correctly described, and the objection merely as to the omission of a number, by which it might be "more clearly and accurately defined" within the 40th section, that section expressly enabling the barrister in such a case to alter the description of the qualification. On the whole, it is confidently submitted that the revising barrister's decision is correct.

*Whately* was heard in reply.

*Wilde C. J.* I am of opinion in this case that the decision of the revising barrister is right, and that he had no power to make the amendment asked. The case of *Bartlett v. Gibbs* has decided that where the right to vote arises out of two houses held in succession, both must be stated in the list, and I think the good sense of that decision, as well as the necessity for it with reference to the act of parliament, is quite clear. The object of the legislature was that an opportunity should be given to ascertain whether or not the necessary incidents of the qualification existed, and that object would not be answered unless the situation of the qualifying property were fully stated. The statute having established the right to vote in respect of a successive occupation of different houses, it becomes just as important that the particulars should be given of one house as the other, and therefore it was that in *Bartlett v. Gibbs*, the court decided that both the houses held in succession must be stated. The court there also went further, and said, that the revising barrister had not the power to amend, by adding one of the houses which had been omitted. That being so, we have now before us the question of whether the description originally given of the property was such as, in *Bartlett v. Gibbs*, the court said was necessary, and it is quite clear to me that it was not, for here there is not merely an omission of something, but the statement of a false description. Nobody looking at the list had a right to suspect that the claimant had any other property in any other place than Butcher Row, and after going to Butcher Row a party would deem it unnecessary to go any further. If the claimant were allowed to supply the part wanting in the description at the last moment, and to say, as here, that he also occupied a house in "Coleham;" what time would a party have for inquiring into the circumstances under which he occupied? In one of the cases referred to, the omission of the numbers of the houses was held a good objection: here the description is generally "Butcher Row," and when the right to vote is impeached, and the objector is ready to prove that the claimant did not occupy the house in Butcher Row for the specified time, the latter says, No, I occupied a house part of the time in Coleham, and asks the revising barrister to amend. The revising barrister refuses to do so, on the ground that he had no power. Now the 40th sec. of the Registration Act gives the power to amend, if at all; and it provides, that

where the property shall be insufficiently described or shall be wholly omitted, and the matter so insufficiently described, or wholly omitted, shall be supplied to the barrister's satisfaction, an amendment shall be made. But it being thought that too large a power was thereby given, a proviso was added, which declared, that "the barrister shall not be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same." Now, surely it is very simple to see whether the matter required to be added here does define more accurately, or whether it is not the addition of something wholly new and independent. What is there with relation to "Butcher Row" more accurately defined by adding "Coleham?" It seems to me to be something wholly independent, and if added would be substantially the addition of something new, not before found in the list. With respect to *Hitchins v. Brown*, the 4th column there gave expressly all information with respect to the two houses which constituted the qualifying property, and therefore, everything useful to be known. The case of *Flounders v. Donner* was one in which the court directed that the omission of the numbers of the houses was material, because the statute in express terms said, that if a house had a number, it must be stated. With respect to the power of amendment, three of the judges in that case said nothing, but Mr. Justice Erle expressed an opinion to the effect that the revising barrister had such power. That case, however, did not apply at all to the present, for here the omission appeared to be something which, if added, would not be a "more accurately defining," but an addition of something substantially different. On the whole, therefore, I think the revising barrister's decision must be affirmed.

*Coltman, J., Maule, J., and Williams, J., concurred.*

Decision affirmed with costs.

### ERCHQUEUR.

Before Mr. Baron Platt.

*Parker v. Crouch.* Nov. 24, 1847.

COSTS IN ACTIONS COMMENCED SINCE THE PASSING OF THE COUNTY COURTS ACT.

*Per Baron Platt.*—*Plaintiff in an action commenced since the 15th March, is entitled to costs if there was no County Court open in his district at the time of his suing out the writ. Sed quare.*

TRESPASS. The writ was issued on the 25th March, the declaration delivered on the 8th June, and the trial took place on the 9th August, at the Surrey Assizes, before Mr. Justice Coltman, when the plaintiff obtained a verdict for 40s. damages. The judge refused to certify, and the plaintiff subsequently having taxed his costs in the usual manner, the defendant obtained a rule nisi to set aside the taxation on the ground that the plaintiff was deprived of his costs by the 9 & 10 Vict. c. 95.

*Petersdorff* now showed cause, and first submitted that even if the plaintiff's right to costs were at all affected by that act, the defendant should have applied to enter a suggestion to deprive him of them; *Watson v. Quiller*, 11 M. & W. 706; *Forman v. Davis*, id. 730: and next relied on affidavits showing that on the 25th of March, when the action was commenced, there was no County Court constituted, or judge appointed, or office open for the issuing of writs under the new act, in the district of Wimbledon, where the cause of action arose, and which was now within the jurisdiction of the Kingston Court.

*Borill*, contra, contended that the act having been brought into operation on the 15th of March by the order in council, in all actions commenced after that day, which were of a character to be tried in the new courts, the plaintiffs were to be deprived of costs, whether there was a court then open or not in the district for trying them, as it was their duty to wait till such courts should be constituted in their neighbourhood. The Queen, by the order in council, directed the act to come into operation on the 15th March. From that day the County Court became the court for recovery of such claims. If she had not proceeded further, and neither appointed judges nor assigned districts, the old County Court, of which those under the present act were merely modifications, would be the proper court for entertaining such actions. The effect of the 128th and 129th sections was, that after the passing of the act no trifling action should be brought "for which a plaint might be entered in the County Court." These words "for which a plaint might be entered in the County Court" were descriptive of the cause of action, not of the court where the action was to be brought. If this were not the meaning of the act, it would have said "from and after the appointment of judges, the assignment of districts, the opening of courts, and the making of seals for the same, no action shall be brought;" but it said no such thing, the object of the legislature being to prevent the superior courts from being swamped by every petty action which had been lying by for years.

*Platt, B.*, after stating the substance of the 1st, 2nd, 3rd, 4th, and 5th clauses, said, it was the obvious intention of the legislature to establish new courts after the fashion of the old County Courts, but which were not to be the County Courts. One of the provisions of the act was, that the County Courts might be holden simultaneously with those "holden under this act." He did not think that the words of the 119th section,—"if in any action commenced after the passing of this act in any of her Majesty's Superior Courts of Record for which a plaint might have been entered in any court holden under this act," could be said to apply to a proceeding under the old County Court, for that would not be a court "holden under this act," and in this case there was no other court at the time in this particular district in which a plaint might have been entered. The

construction contended for by the defendant would make the legislature provide that if the plaintiff did not do what was impossible, he should lose his costs. Could there be anything more absurd? The plain meaning of the statute was, that if after the passing of it parties sued in the superior courts on causes of action for which they might sue in one of these new courts then actually open for the purpose of administering justice in the district, they should lose their costs in the contingencies specified under the 129th section. He was clearly of opinion that the present case did not come within the statute, and should therefore discharge the rule with costs.

Rule discharged with costs.

*Bovill* then asked for leave to enter a suggestion, otherwise there would be no means of reviewing his lordship's decision; and there was no reason why the defendant should not have the benefit of the objection on the record.

*Platt, B.* I see no reason why I should give you the benefit of an *apex juris*. You have not hit the point properly. The motion now before me is at an end, and I will not interfere further. Do you move?

*Bovill* admitted that he was not in a position to move then.

(Before the full Court.)

November 25.

*Bovill* this day applied for a rule to have the suggestion entered on the roll, so that he might be in a position to bring before a court of error the question of the plaintiff's right to costs in this case. The same grounds having been again gone over as on the rule above to set aside the plaintiff's taxation of costs, the court granted a

Rule nisi to enter a suggestion.

#### Court of Bankruptcy.

In re *Irwin*. *Ex parte Hamer*. 17th Dec 1847.

WITNESS.—PRIVILEGE FROM ARREST.

A witness arrested on his way to the Court of Bankruptcy, by virtue of a warrant issued under the *Small Debts Act*, is entitled to be discharged from custody.

*Mr. Bamfield Hamer* applied to *Mr. Commissioner Goulbourn* for an order directing his discharge from custody, upon the following statement of facts. He had been served on the preceding evening with a summons signed by *Mr. Commissioner Fonblanque*, calling upon him to attend this court, at ten o'clock, to give evidence before *Mr. Commissioner Goulbourn* in the matter of an insolvent named *Irwin*. He left his home this morning a few minutes after nine o'clock, in obedience to the summons, intending to proceed directly to the court, but before he was twenty yards from his own door he was arrested, and was now in custody of the officer.

*Mr. Commissioner Goulbourn* inquired upon what process the applicant was arrested and the officer produced his warrant, which appeared to have been granted by *Mr. Commissioner Law*, one of the insolvent commissioners, under the *Small Debts Act*, 8 & 9 Vict. c. 127, s. 1, for a judgment debt which, including costs, amounted to 27*l*. The learned commissioner said, it was matter of some doubt whether a warrant issued under this Act was to be considered in the nature of process for contempt, or as an execution for a debt. If it was to be considered in the light of an execution for a debt, the witness was clearly entitled to his discharge. As the matter was of some importance, he should consult his brother commissioners. The learned commissioner then retired, and upon his return stated, that he had had an opportunity of consulting Commissioners *Evans* and *Fonblanque*, who agreed with him in thinking, that *Mr. Commissioner Law's* warrant in this case was to be regarded as similar in effect to an ordinary writ of *capias ad satisfaciendum*. Such being the case, the witness was clearly privileged from arrest, coming to, remaining at, and returning from, this court, where he was summoned to give evidence. Upon making oath to the facts already stated by him, *Mr. Hamer* would be entitled to his discharge; but he must sign an undertaking not to bring any action, though it was extremely doubtful, under the circumstances, whether any action would lie.

*Mr. Hamer* having sworn to the facts above stated, and signed the required undertaking, was then discharged from custody.

### ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

#### Law of Costs.

##### ADMINISTRATION SUIT.

*Evidence improperly taken.—Wilful neglect and default.—Improper expenditure of trust money.*—Proof of improper expenditure of money by executors will not support a decree against them for an account on the footing of wilful neglect or default.

A bill by residuary legatees prayed an account against the defendants, the executors, on

the footing of wilful neglect and default, but made no case of misconduct against them, except that they had improperly defended an action in which they had failed, and the costs of which they had claimed to retain out of the estate. The court at the hearing, although of opinion that the action ought not to have been defended, gave the defendant their costs of the depositions which had been taken relative to that subject, on the ground, that having no connexion with a case of wilful neglect and de-

fault, it was not a proper matter to be put in issue at that stage of the suit. *Smith v. Chambers*, 2 Phill. 221.

#### AMENDMENT.

**Error. — Insufficient tender.** — Interlocutory costs may be set off against each other by the party interested without leave to do so. When leave is given to amend on payment of costs, such payment is a condition precedent to amending.

If when costs are being taxed an error is made in the casting up, which is not discovered until after the Master has made his allocatur, the party to whose prejudice such error has arisen has no right to take upon himself to correct it; and if he tenders less than the actual amount found by such allocatur, such tender will be bad. *Levy v. Drew*, 35 L. O. 147.

See *Dismissal*.

#### APPEAL FOR COSTS.

**Infringement of patent. — Dismissal.** — The rule which prohibits an appeal for costs alone, is confined to those cases in which the correctness of the decision as to costs cannot be judged of without rehearing the cause upon the merits, and therefore does not apply to a case in which the error of such decision is apparent on the face of the decree or order appealed from.

Where a bill to restrain an alleged infringement of a copyright is retained at the hearing, with liberty to the plaintiff to bring an action, and the action is accordingly brought and fails, it is of course that the bill should be dismissed with costs, and therefore, if dismissed without costs, it is error on the face of the decree. *Chappell v. Purday*, 2 Phill. 227.

#### CONTEMPT.

**Receiver.** — After a petition has stood over at the request of the respondent's counsel, for his convenience, the petitioner incurred a contempt which he had not cleared when the petition came on again: *Held*, that he was nevertheless entitled to be heard.

A receiver who, without the sanction of the court, defends an action brought against him by a party to the cause, is not on that account disentitled to the assistance of the court in recovering from such party the extra costs of the action, although, if his defence had failed, he would not under such circumstances have been entitled to reimbursement. *Bristow v. Needham*, 2 Phill. 190.

#### CONTRIBUTION.

See *Creditor's Suit*.

#### COUNSEL.

1. **Short-hand writers.** — On the taxation of costs as between party and party, a special fee to counsel; a fee to a second leading counsel; fees for more than one consultation; and a charge for short-hand writer's notes, were disallowed. *Semble, Nickell v. Haslam*, overruled. *Smith v. Effingham*, 34 L. O. 202.

2. **New orders.** — A party beneficially in-

terested in a testator's estate employed counsel to attend for him before the Master on a question as to the propriety of allowing certain items in the executor's charge: *Held*, notwithstanding the question was one of considerable difficulty, that the expenses of employing counsel ought not to be allowed in taxing costs as between party and party. *Russell v. Nicholls*, 15 Sim. 151.

#### CREDITORS' SUIT.

**Contribution to costs.** — The usual direction in decrees in creditors' suits that the creditors shall, before they are admitted, contribute their proportion to the expenses of the suit, does not prevent the court, on further directions, if the case warrants it, from ordering the plaintiff to pay all the costs of the suit. But if the suit be anything more than a mere creditors' suit, the direction for contribution ought to be limited to the costs of that part of the suit in which all the creditors have a common interest with the plaintiffs. *Dunning v. Hards*, 2 Phill. 294.

#### DISCOVERY.

1. **12th Order of May, 1845.** — A bill of discovery is not within the 12th Order of May, 1845, unless it be a cross bill in aid of a defence to an original bill. *Heming v. Dingwall*, 2 Phill. 212.

2. A defendant to a bill for discovery and to perpetuate the testimony of witnesses is entitled to his costs of the discovery, although he has examined witnesses in chief. *Skrine v. Powell*, 15 Sim. 81.

#### DISMISSAL FOR WANT OF PROSECUTION.

**General orders. — Order to amend.** — Under the Orders of May, 1845, in a case where there are several defendants, any one of them may move to dismiss for want of prosecution at the expiration of four weeks after his answer is deemed sufficient, provided the plaintiff has since taken no step, and although his co-defendants may not have put in their answer; but an order to amend obtained and served after the notice of motion and before its hearing is, under ordinary circumstances, an answer to the motion to dismiss, but the plaintiff having by such means intercepted the defendant's right, must pay the costs of the motion. *Lester v. Archdale*, 9 Beav. 156.

See *Appeal for Costs; Fraud; Specific Performance*.

#### EJECTMENT.

1 & 2 Vict. c. 110, s. 18. — In an action of ejectment in which a verdict was found for the defendant, costs taxed, and the Master's allocatur for the amount indorsed on the consent rule, which was served on the attorney for the lessors of the plaintiff, and the amount not being paid on demand made on one of the lessors of the plaintiff, the defendant issued a writ of *fiery facias*.

*Held*, this was an order for the payment of costs under the 1 & 2 Vict. c. 110, s. 18, and the court discharged a rule obtained for the purpose of setting aside the writ for irregu-



larity. *Doe dem. Hemming and others v. Barratt*, 34 L. O. 251.

#### ERROR.

*See Amendment.*

#### EXECUTOR.

*Representative of insolvent executor.*—The representative of a defaulting executor fully accounting, is entitled to deduct his costs of suit out of the assets, though they may be insufficient to repay the breach of trust. *Haldenby v. Spofforth*, 9 Beav. 195.

*See Petition for Costs.*

#### FRAUD.

*Dismissal.*—Observations as to the legal and equitable right of parties to bar known existing adverse claims by fine and non-claim. If in levying a fine a direct fraud is practised, this court has undoubted jurisdiction to give relief, but the mere fact that a party levying a fine has good reason to believe that if he did not do so an adverse claim might or would be established against him, has never been considered as sufficient evidence of a gross fraud to induce this court to grant relief.

An estate was settled on husband and wife for life, with a limitation to their issue, and in default a power of appointment was given to the wife. There was one child only of the marriage, who died an infant. The wife survived her husband, and appointed the estate to *G. D. F.*, who was the releasee to uses, and had possession of the settlement. *G. D. F.*, shortly after the wife's death, made a feoffment and levied a fine with proclamations. After the expiration of five years, the heir of the child claimed the estate, insisting that under the terms of the settlement the child took the estate in fee, and that the power of appointment had never arisen. He filed a bill against *G. D. F.* to avoid the fine, alleging that it had been levied with the full knowledge of the plaintiff's rights, and with a fraudulent view to bar them. *Held*, that the act of *G. D. F.* did not constitute a fraud; that *G. D. F.* stood in no fiduciary relation towards the plaintiff; and the bill was dismissed with costs.

Where a plaintiff imputes personal fraud which is not proved, it is a reason for awarding costs against him on the dismissal of his bill. *Langley v. Fisher*, 9 Beav. 90.

#### INTERLOCUTORY APPLICATIONS.

*45th Order of May, 1845.*—After the filing of a bill, plaintiff gave notice of motion for an injunction, which motion, at request of defendants, stood over; in the mean time defendants filed a demurrer, which was over-ruled, but, on appeal, allowed. Plaintiff being ordered to pay the costs of the demurrer and the costs of the suit. *Held*, that the defendants were not entitled to the costs incurred by them in preparing to resist the motion. *Finden v. Stephens*, 35 L. O. 35.

#### MORTGAGE.

*Assignment of debt.*—Decree by consent on

*motion.*—A bill filed for redemption of a mortgage, and an injunction to restrain a sale under a power alleged to have been fraudulently inserted in the deed, contained various charges of oppression and misconduct against the defendant, on the ground of which it prayed, that he might pay the costs of the suit.

On a motion for an injunction supported by affidavits of those charges, the defendant submitted to an immediate account, the plaintiff undertaking to pay what should be found due, and further directions and costs were reserved: *Held*, on a subsequent hearing of the cause for further directions, that the affidavits filed on the former occasion could not be read, the first order having shut out all the merits except the account, and an order giving the plaintiff the costs of the suit on the ground of those affidavits, was on appeal dismissed, and the defendant was allowed his costs according to the ordinary rule. *Dunstan v. Patterson*, 2 Phill. 341.

#### MOTION.

1. *Reservation of costs.*—If the costs of a motion are reserved until the hearing, and at the hearing no motion is made as to those costs, but the costs of the suit are reserved until the hearing for further directions, that reservation does not include the costs of the motion, and consequently, the court can make no order respecting them. *Gardner v. Marshall*, 14 Sim. 575.

2. The costs of an abandoned motion in support of which the party has given notice of his intention to read an affidavit previously filed in the cause, are only 40s. *Green v. Meares*, 14 Sim. 526.

#### PETITION FOR COSTS.

*Priority of executor's costs when found sufficient.*—Whether it is regular to present a petition to come on with the cause on further directions, for the purpose of stating circumstances occurring since the filing of the bill, with a view only to the adjudication of the costs of suit: *Semble*, not.

Where the fund is deficient, the executor's costs of an administration suit are paid thereout in priority of the other parties. *Tanner v. Dancey*, 9 Beav. 339.

#### PROCEEDING FOR COSTS.

Where a suit was prolonged for the sake of the costs, after the question in dispute between the parties had in effect been decided, the court refused to give costs on either side. *Ottley v. Gray*, 35 L. O. 9.

#### RECEIVER.

An adverse application was made against a receiver by a party to the cause, which was refused with costs. The applicant being wholly unable to pay the costs: *Held*, that the receiver was entitled to be indemnified and have his costs, as between solicitor and client, out of the fund in hand belonging to incumbrancers. *Courand v. Hammer*, 9 Beav. 3.

*See Contempt.*



## REHEARING.

An order for rehearing was discharged with costs, but in the mean time the cause had been set down and briefs delivered: *Held*, that the costs thereof could not be included in the order, and could only be given on a rehearing, or upon special application. *Davenport v. Stafford*, 9 Beav. 106.

## RETAINER, SPECIAL.

*Held*, that in taxing the costs of a suit which were to be paid by the defendant, a special retainer paid by the plaintiff to the Attorney-General, who did not actually practise in the Court of Chancery, ought to be allowed, although there were no special circumstances which rendered the employment of the Attorney-General necessary. *Nichols v. Haslam*, 15 Sim. 49.

## SECURITY FOR COSTS.

A plaintiff, whose residence was correctly stated in the bill, ordered to give security for costs, because he had frequently changed his place of abode since the bill was filed. *Player v. Anderson*, 15 Sim. 104.

Case cited in the judgment: *Calvert v. Day*, 2 Youn. & Coll. Eq. Ex. 217.

## SHORT-HAND WRITER'S NOTES.

See *Counsel*.

## SPECIFIC PERFORMANCE.

*Dismissal*.—Where a bill for specific performance is filed by a purchaser, and it turns out that the vendor cannot make a good title, the bill is dismissed, but without costs. *Malden v. Fyson*, 9 Beav. 347.

## STAYING TRIAL.

An application to stay the trial of an issue for the purpose of obtaining further evidence refused with costs under the circumstances. *Hargrave v. Hargrave*, 9 Beav. 153.

## TRUSTEE.

1. *A.* assigned leaseholds to *B.* in consideration of 400*l.* stated to have been paid to him by *B.* On the next day *B.* executed a deed declaring himself to be a trustee of the leaseholds for *A.*'s wife. The deeds were afterwards declared to be fraudulent and void as against *A.*'s creditors, and the court refused to give *B.* his costs, because the declaration of trust recited falsely that the 400*l.* was the separate property of *A.*'s wife, and that *B.* had received it from her, and *B.* had signed a receipt for it. *Turquand v. Knight*, 14 Sim. 643.

2. *Lunatic*.—*Maintenance*.—*Costs of cross suit*.—If a trustee be sued in Chancery for an account, and it appears that he has properly expended sums of money for the protection and safety, or for the maintenance and support of his *cestui que trust*, at a time when he, though adult, was incapable of taking care of himself, the court will allow him credit in account for such sums of money.

A bill may be filed in the name of a person

alleged to be of unsound mind; though not found so by inquisition, by any one professing to be his next friend, and such a person may be sued as a defendant, and the court then appoints a guardian to answer for him. In such cases the court imposes all the restraints of infancy, and the party is bound by the acts of the guardian so appointed. The court having proper evidence that they are incapable of protecting their own interests, treats them as infants, or as insane, though not found so by inquisition, and being satisfied that their next friend or guardian pays proper attention to their interests, and making all necessary inquiries to ascertain their rights and what is beneficial to them, or, if necessary, directing that a commission may be applied for, ultimately deals with their rights and property as justice may require.

A contract may be implied in favour of a person who has supplied a person of unsound mind, though not so found by inquisition, with necessaries, or has provided him with proper protection and support.—*Semble*.

Jurisdiction of the court to interfere for the protection of a lunatic not found so by inquisition.

An executor was allowed, under the circumstances, the costs of a cross cause for administration of the estate instituted by him against his *cestui que trust*. *Nelson v. Duncombe*, *Duncombe v. Nelson*, 9 Beav. 211.

Case cited in the judgment: *Sherwood v. Sander-son*, 19 Ves. 280.

3. *Separate appearance*.—Trustees appeared separately. One lived in a distant part of the country. The court declined making any special order as to costs. *Wiles v. Cooper*, 9 Beav. 298.

4. *Separate answer*.—Where a bill was filed on behalf of an infant against trustees for maintenance, and one of the trustees being at variance with the other, employed a different solicitor and answered separately: *Held*, that the costs of so doing could not be allowed him. *Webb v. Webb*, 35 L. O. 116.

## TWO SUITS.

1. *Proceeding after notice of decree*.—If the decree in one of two suits will effect the object of the other, the proceedings in the latter may be stayed, but the party moving is not entitled to his costs from the party restrained, and who has notice merely of the decree. *Lewis v. Damer*, 34 L. O. 300.

2. *Same object*.—*Staying proceedings*.—A party prosecuting a suit after notice of a decree in another suit, under which he may obtain all the relief which he seeks in his own, may be refused his costs of an application to stop proceedings, but it is contrary to the practice to order him to pay such costs.

Such application may be made by the plaintiff in the suit in which the decree has been made, if he have an interest in staying the proceedings, as well as by the defendant, although such plaintiff be not a party to the other suit. *Earl of Portarlington v. Damer*, 2 Phill. 262.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE

SATURDAY, JANUARY 1, 1848.

—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### PRIVATE ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

WE are not blind to the imperfections of the Bankruptcy Laws, aggravated as they have been by preposterous and ill-considered changes, nor are we peculiarly enamoured with the machinery by, or the mode in which, this branch of the law is administered. Defective as the system is, however, we concur with those who insist it affords in general a more satisfactory assurance that creditors will obtain that to which they are undoubtedly entitled,—the equal distribution of all the effects possessed by a bankrupt at the time of his bankruptcy, than can be secured by any private arrangement. We are quite aware that this view was not popular in the city only a short time since, and are not sorry to find the creditors of insolvent houses, great and small, rapidly coming round to our opinion. This new-fangled system of winding up the affairs of bankrupt houses, under a deed of inspection, is, at the best, nothing more than a plan for distributing assets, without any investigation, and in nine cases out of ten is founded upon an objectionable basis.

It is uniformly resolved in the first instance, that small creditors—that is to say, creditors to the extent of 50*l.* or 100*l.*, as the case may be, should be paid in full. Under this resolution the domestic creditors of the bankrupt receive 20*s.* in the pound at the expense of his trade creditors. No doubt, it is extremely grateful to the feelings of a person who has been accustomed to fill, and expect to be able to continue to maintain,

a certain position in society, that those who supplied his household, his grocer, and tailor, and wine merchant, should not be losers by his unsuccessful speculations. Is it just, however, that they should fare so very much better than his trade creditors? It is quite possible, the bankrupt merchant may have dealt with the tradesmen who supplied his house for many years, paid them punctually, and that they have realized a good round sum by way of profit from his custom. Why should tradesmen of this description be placed in a more advantageous position than trade creditors, some of whom might have had no other connection with the bankrupt, than the misfortune of holding one of his dishonoured acceptances, received in the ordinary course of business? It is impossible to suggest any good reason why, as between creditors, those of one class should be preferred to another after this fashion. It may be said, that upon the suspension of great houses, it is generally found the aggregate sum payable to domestic creditors is comparatively insignificant. If the fact be so, the arrangement by which this class of creditors are paid in full, and others paid only a small dividend, is not the less objectionable in principle.

It may be freely admitted, however, that this is not the greatest objection to the private arrangements which have lately been so much resorted to. Those arrangements afford abundant opportunities for the exercise of dexterity and management, on the part of those who have the power and disposition to bring those qualities into play. Questionable claims are frequently admitted upon conditions mutually advan-

tageous to the claimant and the alleged debtor, though very little to the benefit of the insolvent trader's estate. It is constantly thrown out as an inducement to creditors, to accept a proposed composition, that there are ante-nuptial or post-nuptial settlements, or debts due to relatives, who, in consideration of the proposed arrangement, are willing magnanimously to relinquish the securities to which they are alleged to be entitled, and to share equally with the unsecured creditors, whatever the bankrupt's estate may yield. Lord Eldon used to say, that the claims of relations on a bankrupt's estate were, either the best or the worst, the most meritorious or the most suspicious, of all claims. When a trader is in difficulty or embarrassment, and has affluent relatives, nothing is more natural than that he should seek assistance from them, and when advances are made by friends to assist a struggling trader, nothing can be more equitable than that those who, generously and confidingly, administered to his necessities, should be reimbursed rateably with other creditors as far as his estate will admit. On the other hand, nothing is more common than for a trader in embarrassed circumstances, to enter into legal obligations to those to whom he has really incurred no pecuniary obligations, with the fraudulent purpose of protecting himself from the just consequences of reckless extravagance or improvident trading. The court of bankruptcy, whatever its other defects may be, affords means for probing and investigating the thousand fraudulent transactions unprincipled men in embarrassed circumstances resort to, which means are voluntarily abandoned by creditors, who rely on the interested statements of accountants hired by insolvent firms, in preference to the protection which the established tribunals of the country affords.

We have already endeavoured to combat an impression which prevails extensively, that the affairs of an insolvent firm may be wound up under private inspection, at a much less expense, than the estate of the same firm could be administered under a fiat in bankruptcy. Our conviction that this view is erroneous, has been fortified by a communication from a correspondent whose experience and knowledge of the subject gives deserved weight to his opinion. (See *ante*, p. 111.) As the remarks already hazarded on this part of the subject, do not seem to have been sufficiently explicit, we may be excused for discussing the matter somewhat in detail. Many of the expenses

consequent upon the winding up of an insolvent estate under a fiat in bankruptcy, must also be incurred when the affairs of a firm which has stopped payment are to be wound up under the superintendence of inspectors. In both cases professional services must be obtained and remunerated. In the one event the solicitor's bill is inevitably subjected to taxation, in the other, the solicitor's charges are not necessarily subjected to any revision of the kind. So likewise with respect to the accountant's charges. In bankruptcy those charges are specifically required, by a provision of the statute 5 and 6 Vict. c. 122, s. 83, to be subjected to the taxing officer's opinion. Under private arrangements, the accountant charges what he thinks reasonable and fair, under the circumstances, and there are no means by which those charges can be brought under the revision of any public officer. The debts and assets are collected and realized under a fiat at much less expense than by any other mode of procedure, as the Court of Bankruptcy exercises a compulsory power of enforcing the admission of debts due to bankrupts' estates, which is singularly efficacious and economical. The court fees, and the remuneration to which the official assignee is entitled, are items of expense peculiar to the proceedings in bankruptcy, and are generally pointed out as a sufficient ground for recommending the avoidance of a resort to that tribunal, in cases where the assets are expected to be considerable. Now, it so happens, as we have already remarked, that these charges, the enormity of which are so often insisted upon, operate much less objectionably when there is a considerable estate to distribute. The court fees, which vary from 50*l.* to 60*l.*, although most oppressive when the estate is trifling, are really a matter of comparatively small importance when viewed in reference to a large estate. Upon an estate producing 5000*l.*, for instance, the court fees would probably not exceed 2*l.* percent., and in no case could amount to above 3*l.* percent. Assuming the average to be two and a half per cent., which is rather above the mark, the creditor in such a case would receive 19*s.* 6*d.*, instead of 20*s.* for every pound to be distributed. If the estate realized 10000*l.*, however, the court fees would only cause a reduction of 3*d.* in the pound, and so in proportion as the distributable estate increased in amount. The same observation is applicable to the remuneration payable to the official assignees. As already remarked, with an unaccountable disregard to uniformity, the commissioners have es-

established a different scale of remuneration in each of the six metropolitan courts! The general result, however, we have reason to know, is very much the same in all the courts. The official assignee receives, upon an average of twelve months, upon all the bankruptcies allotted to him, about two-and-a-half per cent., but his remuneration, when the sum to be divided amongst creditors amounts to 25,000*l.*, does not exceed one per cent., which is somewhat less than  $2\frac{1}{2}d.$  in the pound, upon the sum to be distributed amongst the creditors. There are few cases of commercial failure, we apprehend, in which the superintendence and control of an able man of business, unconnected with the parties, and placed by his position above suspicion, is not cheaply purchased by such an outlay. If the assets could be as well and as cheaply distributed under a private arrangement, as through the instrumentality of the Court of Bankruptcy, which we greatly doubt, the facilities which the latter affords for the investigation and discovery of fraud, renders it decidedly preferable, and more advantageous to creditors. In a word, justice can only be administered in such cases through the instrumentality of a public tribunal, and the attention of the profession and the public cannot be more usefully directed than to the subject of the bankruptcy laws and their effective administration.

#### ADMISSIBILITY OF EVIDENCE TO EXPLAIN GUARANTEE.

In a recent number,<sup>a</sup> when discussing the form and effect of a Guarantee, we took occasion to remark, how frequently this description of security turned out worthless, from the defective construction of the instrument. A case has been subsequently reported<sup>b</sup> which indicates a disposition, on the part of the common law judges, to extend and give effect to the equitable principle of construction, that an instrument ambiguous in its terms may be explained by parol evidence.

In the case under consideration, the guarantee was in these terms: "In consideration of your having, this day, advanced to our client, Mr. V. D., of, &c., 750*l.*, secured by his warrant of attorney, payable on the 22nd August next, we hereby jointly and severally undertake to pay the same on default, &c. Dated, &c., Swan & M." An action having been brought on

this instrument, it was contended at the trial, that the guarantee referred to a past consideration, and that an action could not be maintained on it, as for a future consideration. On the other side it was submitted, that the ambiguity was latent and might be explained by parol evidence. The question came before the Court of Exchequer upon a rule to set aside a verdict taken for the plaintiff, and enter a nonsuit; it being conceded in the argument, that if the defendant's undertaking was in consideration of past advances, the plaintiff was to be nonsuited, but if it was in consideration of future advances, he was to retain his verdict.

The court, in giving judgment, proceeded on the principle, that in the case of a guarantee, as of a will, the circumstances under which the document was executed may be looked at, not to make the document, but to show its construction; not to contradict it, but to enable the court to read it properly. The words "this day," in the guarantee, might mean any part of the day. "Having advanced" might mean "shall have this day advanced." Evidence of the time of the advance was, therefore, properly received, and from this evidence it appeared that the guarantee was made simultaneously with the advance of money by the plaintiff to the party whose debt was guaranteed. By taking the facts of the case, and applying the rules of common sense to them, the true meaning of the parties was arrived at, without contradicting the instrument. If the advance had been stated to be made "yesterday," evidence could not be adduced to show that the parties meant "to-day;" but as "this day" might mean either a future or a past period of the day, the evidence of the time of advance was properly received. The barons, in delivering their judgments, referred to the cases of *Haigh v. Brooks*,<sup>c</sup> *Butcher v. Stuart*,<sup>d</sup> and *Farmer v. Moore*,<sup>e</sup> as governing authorities, and Mr. Baron Parke remarked, that in the former case, where the words were, "in consideration of your being in advance," Lord Abinger was correctly reported to have said, that there was "in the guarantee an ambiguity which might be explained by evidence." Upon these considerations, the court refused to disturb the verdict for the plaintiff, and in effect maintained the sufficiency of the guarantee.

<sup>a</sup> Vol 34, p. 433.

<sup>b</sup> *Goldshede v. Swan*, 16 Law Jour., 284 Exch.

10 Ad & El. 309; 4 Per & D. 291, s. c.

<sup>d</sup> 11 Mees. & W. 857.

15 Law Jour. 391, Q. B.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### FURTHER TIME FOR MAKING RAILWAYS. 11 VICT. C. 3.

*An act to give further time for making certain railways. (20th December 1847.)*

1. *Railway companies may apply to commissioners of railways for extension of time for purchase of lands, &c.*—Whereas divers acts of parliament have been passed for making railways, and in such acts respectively certain periods of time are limited within which only the powers thereby granted, whether for making the railways or for the compulsory purchase of the lands therein referred to, can be lawfully exercised: and whereas it is expedient that in certain cases further time be granted for the purposes aforesaid; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that if any railway company, or person authorized by any act or acts of Parliament to construct a railway or any works connected with a railway, or to purchase lands for any such purpose, desire that the period limited by such act or acts for the completion of such railway or works, or for the purchase of such lands, be extended, such company or person may, at any time within two calendar months after the passing of this act, make application, in writing, to the commissioners of railways, setting forth what extension of time is desired by them or him, and to what part of the railway, or the works or lands connected therewith, the same is intended to apply, and the grounds on which such application is made.

2. *Commissioners may require company to give notice of application by advertisement in the Gazette.*—That if it appear to the said Commissioners that there are sufficient grounds for entertaining such application, they shall require the company, or person making the same, to give notice of such application having been made, by advertisement, inserted in such form as shall be approved of by the said Commissioners, once in the London, Edinburgh, or Dublin Gazette, accordingly as such railway or works or lands are in England, Scotland, or Ireland, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such railway or works or lands to which the extension of time is intended to apply is situated, and affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any such part of such railway or works or lands is situated; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed extension of time, and who desires to object thereto, may bring such objections before the said commissioners.

3. *Commissioners of railways by warrant*

*under their seal, may, upon proof that notice has been given, enlarge the time for the completion of purchases and works.*—That upon proof to the satisfaction of the said commissioners that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the said commissioners, and after considering all such objections, if any, which have been brought before them, the said commissioners may, if they think fit, and upon such terms and conditions as they think fit, by warrant under their seal, and signed by two or more of the said commissioners, extend the period allowed by any such act or acts as aforesaid, whether for the completion of such railway or works or for the compulsory purchase of lands for that purpose, for such further time as the said commissioners think fit, not exceeding two years from the expiration of the periods so allowed by such act or acts respectively; and they may so extend such periods respectively, either as to the whole of such railway or works, and the whole of the lands required for the same, or as to so much of such railway or the works, or the lands connected therewith, as shall be specified for that purpose in such warrant.

4. *Acts mentioned or referred to in such warrants to be construed with reference to the same.*—That when any such warrant as aforesaid is granted by the said commissioners, the act or acts of parliament authorizing the construction of the railway or works mentioned or referred to in such warrant shall, as to the portion of railway or the works or lands described thereby or comprised in such warrant, be construed as if the extended period or periods of time mentioned in such warrant had been by such act or acts limited as the period or periods respectively within which the powers of such act or acts might lawfully be exercised, whether for the construction of such railway or works or for the compulsory purchase of the lands required for the same, instead of the periods mentioned in such act or acts respectively.

5. *Not to revive expired powers. Existing contracts and notices to take lands to be construed as if this act had not passed.*—That this act shall not have the effect of reviving any powers which had expired before the making of such application, and that it shall not prejudice or affect any contract or agreement entered into before the passing of this act; and where before the passing of this act any contract hath been entered into, or notice given by any such railway company or person, for purchasing, taking, or using any lands which, under any such act or acts as aforesaid, such company or person is entitled to purchase, take, or use, this act, or any warrant thereunder, shall not authorize any extension of the time allowed for the purchase of the lands comprised or mentioned in such contract or notice; and every such contract and notice respectively shall be construed and shall take effect, and the same proceeding shall be had thereunder, and all parties thereto shall be entitled to the same

rights and remedies in respect thereof, both at law and in equity, as if this act had not been passed.

6. *Notices of warrants being granted to be published in the Gazette.*—That within one calendar month after the day on which any such warrant as aforesaid is granted by the said commissioners they shall cause notice thereof to be inserted in the London, Edinburgh, or Dublin Gazette, accordingly as the railway, works, or lands mentioned therein is or are in England, Scotland, or Ireland.

7. *Parties aggrieved by extension of time being granted may have compensation for additional Damage.*—That whenever any such warrant as aforesaid shall have been granted by the said commissioners for extending the time within which any of the powers given by any such act or acts may lawfully be exercised, the justices, arbitrators, umpires, or juries respectively, as the case may be, who under the provision of such act or acts shall award or assess the compensation to be made by any such company or person as aforesaid to the owners or occupiers of, or other persons interested in, any lands taken or used for the purposes of any such railway or works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and make compensation for, the additional damage (if any) sustained by such owners, occupiers, or other persons, by reason of any such extension of time having been granted as aforesaid.

8. *Contracts for new works not to be entered into for a limited period, except in certain cases.*—That no railway company authorized by act of parliament to construct a railway, or any works connected with a railway, who had not before the twenty-seventh day of November in the year one thousand eight hundred and forty-seven executed any part of the works, or entered into any contract or agreement for the execution of any part of the works which they were for the first time authorized by such act to construct, shall within twelve calendar months after the passing of this act enter into any contract or agreement for the execution of any works so for the first time authorized by such act, excepting always from this enactment contracts and agreements for the construction of part of any railway or works which by any act shall have been substituted by way of deviation from any part of the line of such railway as authorized by some previous act, or in lieu of some other works authorized by some previous act, and also contracts and agreements for the construction of such other works as the company shall be authorized to proceed in constructing by the consent of the holders of three fifths of the shares or stock held by such of the shareholders of such company as shall signify their assent thereto or dissent therefrom within the time and in the manner herein-after mentioned, or as they shall be authorized to proceed in constructing by an order of the said Commissioners of railways published in the London, Edinburgh, or Dublin

Gazette, according as the works are situated in England, Scotland, or Ireland; and all contracts and agreements entered into in contravention of this enactment shall be utterly void and of no effect.

9. *Mode of ascertaining consent of shareholders to the making of contracts for new works.*—That for the purpose of ascertaining such consent of the shareholders as aforesaid a general meeting of the shareholders of such company shall be held within six weeks after the passing of this act, of which public notice shall be given by public advertisement in the manner required or usually adopted for advertising the extraordinary general meetings of such company; and a circular letter shall be sent by the post, addressed to each of the shareholders of such company, according to his registered address or other known address, describing the portion of line or works proposed to be executed, and stating that a general meeting of the shareholders of such company will be held, at a time and place mentioned in such circular, for the purpose of determining whether a contract for executing such works shall be entered into or not within the twelve months next after the passing of this act, and requesting such shareholder to signify his assent to or dissent from the making of such contract, according to a form to be contained in such circular letter, which form shall be to the effect set forth in the schedule hereto; and such circular letter shall request such shareholder either to return such form, signed by him, in a letter addressed to the secretary of such company, or to attend such general meeting as aforesaid, and deliver the same, so signed by him, to the chairman thereof; and at the meeting so to be held the chairman thereof shall cast up the number or amount of shares or stock held by shareholders assenting to the making of such contract, and the number or amount of shares or stock held by shareholders dissenting therefrom, whether such assent have been signified by the shareholder sending to the secretary of the company such form as aforesaid, signed by him, or by such shareholder attending such meeting, and delivering in the same to the chairman thereof; and such chairman shall thereupon publicly announce the number or amount of shares or stock of the shareholders assenting to the making of such contract, and the number amount of the shares or stock of those dissenting therefrom, and shall state whether or not the holders of three-fifths of the whole of such shares or stock consent to the making of such contract: Provided always, that in computing the number or amount of the shares of shareholders assenting or dissenting as aforesaid no share shall be taken into account the holder whereof shall not have paid all the calls then due by him upon the shares held by him.

10. *Certificate of the chairman of company, countersigned by the secretary, to be evidence of consent.*—That a certificate under the hand of the chairman of the company, and countersigned in each case by the secretary of the

company, stating that such meeting as aforesaid has been duly held, and such circular letter sent, and such consent given as aforesaid, in cases where the same is given, shall, within one week after the day of holding such meeting, be deposited in the office of the said commissioners of railways; and such certificate, or a copy thereof, certified under the seal of the said commissioners to be a true copy, shall be received as evidence in all courts, and before all justices and others, that such consent was duly given within the time aforesaid.

11. That this act may be amended or repealed by any act to be passed in this session of parliament.

Schedule referred to by the foregoing act.

| (1)               | (1)                   | (1)   | (1)                                   | (2)                               |
|-------------------|-----------------------|---|---------------------------------------|-----------------------------------|
| Name of Rail-way. | Name of Share-holder. | No. of shares or amount of stock held by him. | Works proposed to be contract-ed for. | Whether assenting or dis-senting. |
|                   |                       |   |                                       |                                   |

- (1) The secretary will insert these particulars.
- (2) In this column the shareholder will write the word "assenting" or "dissenting," as the case may be, and sign his name thereunder.

NOTICES OF NEW BOOKS.

*Now and Then.* By SAMUEL WARREN, F.R.S., Author of *Ten Thousand a Year*, and the *Diary of a late Physician*. 1848. William Blackwood and Sons. pp. 527.

It is not ordinarily within the province of a professional journal to notice works of fiction. We are permitted, however, to descant on the *History of the Law* and the *Biography of its Professors*;—to report and comment on remarkable trials;—to review the scenes and discuss the merits of the actors and sufferers in the real dramas presented in our courts of justice. A "*Journal of Jurisprudence*," in its widest signification, may deal with the Theories of the Law, and the consequences to society of its wisdom or imperfection. *Now and then* we may overleap these limited boundaries; and whether such or any other causes "us thereunto moving," be sufficient or not, we must, at all events, venture on a notice of Mr. Warren's new book, "*Now and Then*."

Indeed some announcement of its excellence we are bound to give, for a member of the bar, so celebrated as the author, who betakes himself to the performance of a new literary labour, is entitled to find it recorded in these pages amongst the "sayings and doings" of that profession which it is our duty to commemorate. We find, however, abundant grounds in the present volume to justify our selecting it from the mass of works of imagination, and submitting its merits to our readers. It forms, indeed, a truth-speaking chapter in the history of our Criminal Law, and especially in the infliction of capital punishment. It is, in fact, the case of an extraordinary Murder, wherein the proof against the accused depended entirely on circumstantial evidence. Far, however, is the present volume from that Newgate-Calendar school which has long attempted to excite a false sympathy in the public mind in behalf of atrocious criminals invested with great courage and some doubtful or fictitious virtue.

Here the reader will find the law amply vindicated, and the consolations of religion exemplified in the lives as well of the lowly as the lofty of the land.

Although there is no word of preface or introduction disclosing the object of the work, it is manifest, we think, that the author has not for a moment lost sight of the moral purpose with which he set out; of counteracting by example (which is better than precept) the evil effects of most of the French and many of the English novelists, who draw the materials of their incidents and their traits of character from the haunts of vice and crime.

Mr. Warren, by a rare combination of legal knowledge and literary genius, is enabled to interest both the profession and the public; gratifying the former by just views of their high calling, and interesting and instructing the latter in those subjects of forensic investigation which, above all others, when presented by a master-hand, are calculated to arouse the best feelings of human nature.

The practical experience of the author, as well on the Northern Circuit as in London, has enabled him to draw with vividness, not only the general outline of his work, but to fill up with marvellous precision, every detail that was essential to give completeness to all parts of the picture.

The main outline of the story, so far as it will be requisite for our purpose, is soon told. About a hundred years ago, in a place adjoining the sea-shore, lived Adam



Ayliffe, a yeoman possessed of a freehold cottage and land, of which he was partly dispossessed by fulfilling his obligations as surety for an unworthy friend. Near him is the castle and domain of Lord Milverstone, a powerful and wealthy nobleman, whose Steward desires to compel Ayliffe to part from his paternal acres in order to form a new approach to the castle. The peasant is of a most pious and exalted character, and has a son, frank, dutiful, but impetuous. The peer is lofty in intellect as in station, but proud and unbending. It is darkly hinted, as the story proceeds, that in early life he had been engaged in a duel, the result of which dwells heavily on his mind. He has an only son, Lord Almond, possessing all the accomplishments of his age, but afflicted with occasional melancholy, the result also of a duel on some conventional point wherein he had slain his adversary. The daughter of the earl and the young wife of the son are portrayed as eminently charitable, and pious. To these must be added a very prominent character in the tale, the excellent Vicar of the parish, the Rev. Mr. Hylton, a most perfect example of a christian minister. There is also a Captain Lutteridge, a blunt soldier, but the soul of honour and high discipline. The steward of the earl is the *Diabolus* of the story. In revenge for a personal chastisement inflicted upon him by young Ayliffe for threatening his father with the workhouse, a plot is laid, by which the young man is brought under condemnation for poaching. Revengeful expressions are uttered by him, bearing against the steward or his accomplice, which are afterwards perverted as proof of malice to the earl. Soon after, the young lord, disquieted by a conversation amongst the military guests at the Castle, walks forth at night into the wood at some distance, and is not long after found murdered. Young Ayliffe was there waiting to inflict vengeance on the poacher who had been employed, first to tempt and then betray him. In his walk he stumbled on the body of the murdered nobleman, became marked with blood, and hearing sounds of footsteps fled, apprehending suspicion would fall on him, (conscious of his own culpable intentions towards another, though guiltless of this offence).

"Thus conscience doth make cowards of us all."

He was pursued to his father's cottage and apprehended. The murder it appears had been committed with a blunt instrument. Ayliffe had a large bludgeon or stick, on

which were marks of blood, and this was assumed to be the weapon used to perpetrate the crime.

Such were the facts so far as they were known at the time of the trial. This may be considered as the "*Now*" of the story. Twenty years afterwards, as they were "*Then*" discovered, the circumstances which we shall state presently cleared up the mystery. All the proceedings at the trial,—the dignified conduct of the judge, his sagacious and searching questions, his impartiality, his disposition mercifully to give the prisoner the benefit of any possible doubt, yet his firm sense of justice, are all admirably depicted. We cannot, however, say that the prisoner was well defended, though he had both counsel and attorney. Perhaps they were brought into the field of inquiry too late, and anxiously discharged their duty with the defective materials supplied to them to the best of their ability. Amongst other things it does not appear that the bloody stick was sufficiently proved to have been the instrument of death. Contrary to their advice, the prisoner addressed the jury himself, admitting the facts, explaining his conduct and asserting his innocence. Unhappily for his defence, the admissions weighed against him, and his explanations, unsupported by evidence, went for nothing.

The case, as we have said, is represented to have occurred 100 years ago. Mr. Warren has a marvellous power of imitation, not merely of the outward form, the tone and manner of expression of the individuals he represents, but of the inward working of their mind and character. He thus addresses the jury through the Chief Justice before whom the prisoner was tried:—

"Gentlemen of the Jury:—There be many cases in which we are forced to some judgment or other, on the question of *true* or *false*; though lamenting, with just cause, that we have but scanty means for forming such judgment. But in this world it ever must be so, judging, as we must, with imperfect faculties, and concerning matters the knowledge whereof, as (observe you!) constantly happens in crimes, is studiously impeded and concealed, by those that have done such crimes. Seeing, then, that our judgment may be wrong, and, as in this case, may be followed by consequences that cannot be remedied by man; and yet that we *must* form a judgment one way or another, or fail of doing our duty to both God and man; we must very solemnly and carefully do our uttermost, as though our own lives were at stake; and, devoutly asking God's assistance in doing so, leave the result with His mercy, wis-



dom, and justice. Now, gentlemen, in this case, forget, for a very little while, that life depends on the judgment which you must pronounce; but only by-and-bye to remember it the more distinctly and religiously. Did this man at the bar slay the late Lord Alkmond? is your first question; and the only other is—Did he do it with malice aforethought? for if he did, then he has done murder, and your verdict must needs be *Guilty*. He says before you to-day, that he did not kill the Lord Alkmond at all. If you verily believe that he did not, nor was by, counselling and assisting those who did, why, there ends the matter, and he is Not Guilty. But did he? No one but Almighty God above, and the prisoner himself, can—as far as we seem able this day to see—absolutely know whether the prisoner did, as though you had yourselves seen him do it; for even if he had never so solemnly told you that he did, yet that telling would not be such absolute knowledge, but, as I may say, next door to it; and so is it, observe you well, if facts be proved before you, which, be they few or many, point only one way, unless all sense and reason are to be disregarded and outraged. Look, then to what are proved, to your satisfaction, to be *FACTS*; and also forget not that which the prisoner has this day voluntarily told you. That some one did this foul murder is past dispute, the wound proved not being of such a nature that it could possibly have been inflicted by Lord Alkmond himself. The prisoner owns himself to have been with the body at a time closely after that when the deed must, by all accounts have been done; and yet says, that he knows nothing whatever of it, though he ran away; and bloody; and with a bloody stick, such as, it is sworn before you, might have done it. If these be really *facts*, are they not such as point one way only, according to the expression of my Lord Coke, which was read rightly to you by Mr. Solicitor? There is, as you see, no suggestion this day concerning any other who might have done the deed. But the prisoner himself does admit that he went whither he had no right to go; and, in doing that, trespassed secretly by night on the land of another for a malicious and revengeful purpose, armed with that dangerous weapon which you have seen, and is now here; which purpose was privily to lay wait for one who, he says, had wronged him: and (he says himself) that he might, in his anger, possibly have gone further with this unlawful and felonious assault than he had intended when he began it. Now, gentlemen, is it possible, according to the best of your judgment upon these facts, that the prisoner unhappily lit suddenly upon Lord Alkmond, and in the darkness, and the haste of his angered temper, mistook him for the man for whom he was lying in wait, and slew him: and, hearing voices and footsteps, fled for it? The Chief Justice paused, and the jury were evidently uneasy, gazing on him very intently.”

“If that were so,” continued the judge, “then is the person guilty of the murder of Lord Alkmond, beyond all possible

doubt; and your verdict must be *Guilty*, founded on facts proved, and his own admissions. That, I tell you, is the clear law of England, which you must, on your oaths, abide by.”

The prisoner here made violent efforts to rise and speak, but was prevailed on by those beside him, and beneath him, to remain silent, while this frightful possibility against him was being put to the jury. The man most agitated at this time, next to the prisoner, was Mr. Hylton.

“Your first question, gentlemen, as I have told you,” proceeded the Chief Justice, “is, Did the prisoner kill Lord Alkmond? And methinks it may not be ill for you to ask yourselves, If it were not the prisoner, who could it have been? Do you, in your sound discretion, verily, on your oaths, believe that it was not the prisoner? You may so believe, if you credit what he has said here to-day, having, look you, due regard to what is otherwise proved against him. But have you, gentlemen, in your souls, and on your consciences so much uncertainty on the matter, that you cannot bring yourselves to say the prisoner struck the blow, or (which is the same thing in law) was present counselling or assisting those who did? Then has the Crown failed to bring before you evidence sufficient to prove the case which they undertook to prove. But beware, gentlemen, (as ’tis my duty to warn you) of being led away from proved facts, by speculation and conjecture, which are mere will-o’-the-wisps, as I may say, if far-fetched and fanciful; and also take care not to be drawn from your duty by thoughts of the cruelty or meanness which the prisoner charges (for aught we know, truly) on him whom he owns that he went to injure. And as for what has been sworn by Mr. Oxley, my Lord Milverstoke’s local agent, and seemingly a reputable person, why, consider whether you believe that this gentleman really heard the very words which he swears he heard the prisoner use. If such words were spoken, as are told us to-day, they go some little way to show deliberate malice towards the Lord Milverstoke and his family generally;—but Mr. Oxley may be mistaken after all, or (which God forbid) may have had such horrid wickedness as to colour, invent, or pervert, advisedly, against the prisoner. You will also, though I trust it may be needless to mention such a thing, think nothing whatever of the interest with which this trial may have been looked forward to outside or be listened to in this place, to-day; but think you only of your being on your solemn oaths before Almighty God, and judging as fearlessly and justly as though the prisoner and the late Lord Alkmond had changed places—as though the prisoner had been murdered, and Lord Alkmond were here to answer for it. Consider the case, then, gentlemen, under the pressure and sanction of your oaths, according to proved facts, and plain probabilities, such as would guide you in important affairs of your own. Say—Did Lord Alkmond kill himself? Are you totally in the dark? Can you form no

reasonable opinion on the matter? Did Lord Alkmond and the prisoner contend together, so as to make the killing manslaughter? Of this there is no pretence whatever now before you. Then did the prisoner strike the fatal blow, whether knowing the person to be Lord Alkmond, or mistaking him for some one else whom he intended to kill or maim? In either of these two cases you must say—*Guilty*. But if you think the prisoner neither struck the blow, nor counselled nor assisted those who did—knowing nothing, indeed, (as he hath alleged,) about the matter, and that what he has said before you this day is the pure truth, then say you that he is *Not Guilty*. And now, gentlemen, consider the verdict which you shall pronounce.”

The jury retired, and after some time returned with a verdict of guilty.

The reverend Vicar, having seen the prisoner in the condemned cell, and become confirmed in the belief of his innocence, resolved to use every exertion in his power to stay the execution and gain time for inquiry. A letter had been received from a sailor stating, that on the night of the murder, and a short time after its perpetration, whilst his vessel was lying off the coast, he saw two men running on the shore near the wood in question. A mysterious conversation which had agitated Lord Alkmond, and preceded his visit to the wood, was also made the subject of much inquiry. The falsehood and malice of the steward was also urged, and Mr. Hylton proceeded to London, and after interviews with the Prime Minister and the Chief Justice, obtained a respite for a fortnight. This interval passed in vain attempts to elucidate the mysterious conversation, but nothing favourable to the prisoner was elicited. The sailor was not forthcoming, and the statement in his letter, unaccompanied by any facts connecting the fugitives with the offence, was deemed unavailing. The case being complete without the evidence of the steward, the execution was ordered to take place without further delay. The excellent Vicar made one last effort. He appealed to the Royal mercy through the intervention of a nobleman. It had happened not long previously, that an innocent man had been executed, and the following is part of the scene between the King and his minister.

“When Lord Farnborough had, in his usual terse and emphatic fashion, put his Majesty in possession of his, Lord Farnborough’s view of the case, assuring his Majesty, with expressions of profound respect, that a clearer case for hanging there never had been, if justice were to be any longer administered in the country;

his Lordship appeared confounded when the King said, very thoughtfully, that he was by no means so clear on the subject as seemed his Lordship; and in fact felt so uneasy on the matter, being one of life and death, that he could not return to bed without deciding one way or the other. Lord Farnborough assured the King that he need feel no anxiety whatever on a matter which was exclusively within the province of his ministers.

“Why look you, my Lord Farnborough,” quoth the King, somewhat hastily and sternly, “suppose you and I differ on this matter?”

“Please your Majesty, we are your Majesty’s sworn responsible servants”—

“So, so, because you are my servants, my Lord Farnborough, I am to be your puppet, eh?—to register your decrees *volens volens*! By those that begot me, and those before me, but I will show you otherwise! Look you, my Lord, and all of you that serve me; I am set over my people to protect them, and am answerable for them, to Him who set me over them: and if it cost me my crown, look you, as I must answer for it hereafter, I won’t see the humblest creature calling me King, deprived of his life, even though according to law (which can’t give back life taken wrongly,) if I in my conscience do verily doubt whether he ought to die.”

Lord Farnborough said something rather faintly about a constitutional monarchy:—

“Ay,” said the King, catching the word, “but I am also a conscientious King, my Lord. My advisers may be impeached in parliament if they give me evil advice: but I have to answer to the King of Kings; and none but a King can tell a King’s feelings in these matters. God Almighty only knows what I suffered some half a year ago, in a matter of this sort—eh, my Lord? What say you to that? Have you forgotten it?”

“Not at all, please your Majesty; but I take leave humbly to represent, Sir, in the matter now before your Majesty, that your Majesty has no discretion herein, but must allow the law to take its course.”

“I won’t, I won’t, my Lord. There are features about this case that I don’t like; and, in short, I shall not have this man die. Transport him for life, if you please; then, if we be wrong, he may return: but—there are paper, pens, and ink; pray, my Lord, let it be done instantly, for time is precious; I will put my hand to it now—and then methinks I shall sleep soundly till morning.”

“Pardon me, Sir,” began his Lordship, with an air of vast deference—

“No, no! not *you*—I have nought to pardon you; ’tis another I mean to pardon”—

“Sir, this really is one of the plainest cases of guilt”—

“Did you not say the very same thing to me, my Lord, on the occasion I have just spoken of?” inquired the King very solemnly: “did I not *then* say I had doubts? but I yielded to your *certainly*, my Lord! And what followed?”

“‘Please your Majesty we are all frail; all human institutions are liable to error.’

“‘Therefore,’ said the King quickly, ‘ought we the longer to doubt, in matters of life and death, my Lord.’

“‘I do assure your Majesty that the interference of your Majesty will give great dissatisfaction’—

“‘To whom? Where? Why?’ inquired the King sternly. ‘What is that to me, when my conscience is concerned, who have sworn an oath, when God Almighty placed my crown on my head, to cause law and justice, IN MERCY, to be executed in all my judgments? Who swore that oath, my people, or I? I did, and with God’s assistance will keep my oath. And as for my people, they are a brave and virtuous people, and won’t obey me the less, because I will not again let any one die on a gibbet, hastily.’

“Lord Farnborough remained with his eyes very seriously fixed on the King, and his pen in his hand, which hung down by his side.

“‘Let it be done, my Lord,’ said the King peremptorily: and his minister obeyed.”

The reprieve arrived whilst the unhappy man was undergoing the last preparations for his death. The scenes which followed are strikingly told, and we would fain extract part of the great moral lesson which Mr. Warren has here set forth with so much force and truth. But we must hasten onwards.

The facts that were discovered after the accused had suffered no less than twenty years’ banishment were these:—The poacher was convicted of a theft which was then punished with death, and prior to his execution he confessed that, on the night of the murder he was in the wood with a comrade, lying in wait to steal game, and mistaking the young Lord for the gamekeeper, who was in search of them, they struck him a mortal blow on the head with the coulter of a plough, which they threw into a hollow tree, where it was finally discovered.

During this long interval the proud and vindictive Earl had become softened by the influence of religion, and now, fully satisfied of the innocence of Ayliffe’s son, he visited the good old man with much feeling and sorrow, sought and obtained his forgiveness, and finally restored the land which had been purchased from him in his poverty, and bequeathed a munificent legacy to young Ayliffe and his family.

There is so much of truth pervading the descriptions throughout this invaluable work of Mr. Warren—it so much accords with the realities of professional experience, that we are inclined to deal with it as if it were a record of facts taken from the judge’s notes! One conclusion we may practically

deduce, which is equally applicable to a trial now as it was then, a hundred years ago—there ought to be a *Court of Appeal* in criminal cases. We should be glad, if our space permitted, to extract all that passed between the excellent chief justice and the pious and eminent clergyman who so well advocated the cause of the accused. Rarely can such benevolence, zeal, and wisdom be concentrated in one individual; and unjust is it to leave to accidental charity the voluntary duty of investigating the grounds on which the accused may dispute the validity of his sentence.

The ways of providence are peculiarly vindicated throughout the volume,—“the justice of it pleases us.” The beginning of the evil which befell the accused, was laid in the breach of the law, first by his violent assault on the steward, and next by the offence of poaching. Hence his character was lowered, and his evil passions increased. He stalked forth in the darkness of the night in pursuit of vengeance. The object of his search escaped, and he was convicted of the tragic deed which his enemy perpetrated. But his offence was not unpardonable: he survived his fearful peril, returned from banishment a better man, and closed his career with honour and respect.

The haughty Peer also, who pursued with such unrelenting energy the *supposed* destroyer of his son, had as well as that son sent to his last account a human being on questions not of moral but conventional moment; and both were sorely visited,—the one by remorse and a sudden death;—the other by a prolonged life of mental suffering; but ultimately resulting in penitence, forgiveness, and peace!

It is a prevailing opinion that a lawyer, who desires to succeed eminently in his profession, should devote himself to its labours exclusively, and abandon all the pleasant pursuits of literature, which it is supposed must necessarily engage much time and attention; but it is not known with what rapidity, works of an imaginative character are produced. As an instance, we have good reason to believe that the present volume, exceeding 500 pages, was composed in less than a month. We rejoice that Mr. Warren, though much engaged in the duties of his profession, and proceeding steadily forward to an extensive practice, is enabled, during his vacations, to illustrate the facts which come under his knowledge as he did in the great suit which involved *ten thousand a-year*, followed now by a great criminal trial, and hereafter we hope

to be succeeded by some other elucidation of moral and professional subjects. In short, long may his long vacations be thus passed, with gratification to his readers and advantage to himself.

### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE first address to the profession which was issued by the committee of management of the Metropolitan and Provincial Law Association, it will be recollected, was published in the month of May last.\* To most of our readers the second address is also well known, inasmuch as it was transmitted to every attorney and solicitor in England and Wales; but as it may not have reached all our friends, and as we are desirous to enter every important proceeding of the Association on our pages, we subjoin it for convenient reference.

"An Address was recently printed and circulated among the profession, pointing out the occasion which gave rise to this Association, and the objects proposed to be effected for the benefit of the solicitor and the public; but there being reason to believe that this paper has not reached, or has not secured the attention of a considerable number of those whose interests are involved in the success of the Association, the committee have determined to issue a further and more concise statement, to which they invite the earnest consideration of attorneys and solicitors,—if they deem the protection of their just rights, and the improved administration of justice, objects of sufficient importance to deserve their attention and support.

"On the 11th of February last, a meeting was held in London to take this subject into consideration. It was composed of a numerous deputation from various provincial law societies and a considerable number of solicitors resident in the metropolis, and they came to a resolution—*'That in the present state of the legal profession, measures should be adopted for raising the character and position, and for promoting and supporting the interests of Solicitors.'*

"To deliberate upon these measures, a committee was appointed, who made a report to a general meeting which had been previously appointed to be held on the 25th of March.

"After a full consideration of the report, it was resolved—*'That an association be formed, for the purpose of promoting the interests of suitors, and the better and more economical administration of the law; of obtaining the removal of the many and serious grievances to solicitors, and, through them, to the suitors, and of maintaining the rights and increasing the usefulness of the profession.'* That the As-

sociation be called 'THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION,' and consist of all members of the profession who contribute to its funds a donation of not less than 5*l.*, or an annual subscription of not less than 1*l.* That the business of the Association be conducted until the first Wednesday in Easter Term, 1848, by a committee then named, with power to add to their number, and to appoint local sub-committees, and that future committees of management be elected annually by the members, voting either in person or by proxy.

"Such being the origin and constitution of the Society, the committee of management state, for the information of the profession,—

"1st. Some of the reasons which induced the establishment of this Association, and of the objects which are sought to be attained.

"2d. Examples of the evils that embarrass the administration of justice, and require to be removed.

"3d. The measures proposed for removing such evils, and generally for effecting the objects of the Association.

"I. If the former state of the profession of attorney and solicitor, be compared with its present condition and prospects, it will be found that changes have been made, by various legislative and other measures, tending to lower that profession in public opinion, and degrade it from an intellectual to a mechanical employment.

"Thus, for example, attorneys have been shut out from commissionerships in bankruptcy and lunacy, from presiding in various local courts, and from advocating the rights of their clients before many tribunals in which they were formerly accustomed to practise.

"The character of the profession is not a question which affects merely its members: the duties performed by the attorney and solicitor are of indispensable utility to the public—to their convenience—to their necessities—to the wants and exigencies of an extended commerce and an advanced state of civilization. The vast and complicated affairs of the various classes of society in a large and wealthy country, governed by a multiplicity of laws, cannot be well understood nor safely managed, without the constant aid of an intelligent body of men versed in the principles and practical application of those laws.

"If this be true, then are the public deeply interested in the character and abilities of so important an agent:—interested, therefore, that his just claims should be allowed, his rights maintained, and that the education and discipline which are to qualify him for the skilful and faithful discharge of his duties should be promoted and improved, and those objects are worthy of the serious attention and protecting care of the legislature.

"II. Some of the evils which affect the administration of justice and are alike injurious to the attorney and suitor, are,—

"1. *Taxes on Justice* in the shape of fees.

\* See 34 L. O. p. 41.

"2. *Crude Legislation*, which has fastened upon our legal code, ill-digested and ill-constructed statutes, the fertile source of perplexity to judges and practitioners, and of litigation and expense to the suitor.

"3. *Exclusion of Attorneys from Offices of Honourable Distinction*, and which they are peculiarly qualified to fill, instances of which have been already mentioned.

"4. *Solicitorships to Government Boards*.—These offices were formerly held by attorneys and solicitors, but are now frequently and inadequately filled by barristers.

"5. *Exclusive Regulations of the Inns of Court*.—By the rules of the superior courts, attorneys and solicitors were formerly required to be members of one of the Inns of Court or Chancery. The benchers of modern times excluded attorneys and solicitors and their articulated clerks from admission into their societies.

"6. *The Right of Attorneys to act as Advocates*.—This, although restricted much within its ancient limits, has, until recently, been recognised in several Courts of Quarter Sessions, before bankruptcy commissioners, and in courts for the recovery of small debts. But the right has been gradually invaded and circumscribed, and this restriction, which has already led to a great increase of tax upon suitors, has been based upon principles which, if fully carried out, would lead to the entire extinction of the right itself.

"7. *Certificated Conveyancers*.—Of late years a new class of practitioners has arisen, assuming not only the office of the barrister in advising upon titles and settling drafts, but also claiming to transact business for clients, and communicate with solicitors upon conveyancing matters in the same way as solicitors, though comparatively untaxed, and without having given, or being required to give, any evidence of their fitness or capacity.

"8. *Parliamentary Agents*.—Formerly some of the clerks or officers of the two Houses, and a few solicitors, acted in this capacity. At present, not only solicitors, who from a knowledge of the rules of evidence, the laws of property, and the practice of parliament, may be fairly supposed qualified, — but persons who are qualified by merely signing their names in the private bill-office, are allowed to act as parliamentary agents.

"9. *Unjust and unequal Taxation*.—The taxes, in the way of stamp duties, which are levied on attorneys and solicitors, have long been a topic of just complaint. The stamps on the articles of clerkship and admission alone amount to 145*l.* Without entering on the justice or expediency of these duties, the committee, for the present, advert only to the annual tax of 12*l.* on town, and 8*l.* on country solicitors, for the privilege of exercising their calling,—an impost not visited on any other profession.

"10. *Solicitors' Fees and Emoluments*.—Many attempts have been made within the last few years to abridge the length both of legal proceedings, of deeds, and other instruments, and

many measures have passed which curtail the emoluments of the solicitor, but no effort has been made to secure to him a fair remuneration for his labour, skill, and responsibility.

"11. *The Deficient Construction and Inconvenient Situation of Courts of Justice*.

"To these subjects might be added many others—such as *compulsory reference* at sittings and assizes,—the *multiplicity and expense of law reports*, &c.

"III. Some of the measures to be adopted are:—

"1. *The Extension of Law Societies*.—Every solicitor in the kingdom should become a member of one of the local law societies, now existing, or hereafter to be established, in order that the whole profession may be comprehended in one general society. Many advantages will result from this. Union will be one, and not the least. It may appear to some to partake of paradox, but it is nevertheless quite true, that no class of the community has been so supine and inactive as the solicitors in the assertion of their rights, or permitted more passively aggression and encroachment. Scattered and divided, the profession has been weak; combined, their power will be, for the accomplishment of every reasonable object, irresistible.

"2. *Promotion of Fair and Honourable Practice*.—The extension of law societies will serve to promote fair and honourable practice,—an object equally beneficial to the public and to all branches of the profession. To these societies, or to the general association, appeals may be made on disputed points of professional usage; abuses may be examined and rectified; and application to the superior courts, or to parliament, may be concerted.

"3. *Improvements in Legal Education*.—As a means of raising the intellectual character of the profession, the committee recommend that a higher degree of classical literature, of science, and general knowledge, than is ordinarily possessed, should hereafter be required, before the clerk is allowed to be articulated.

"4. *State of the Profession to be submitted to Parliament*.—To promote the redress of all, or at least some, of the public and professional grievances which have been touched upon, and of others that may be hereafter brought to their notice, the committee propose, at as early a period as may be convenient, to bring the general state of the profession, or, if this be too large a matter, at least some particulars of it, under the consideration of parliament.

"To further this object, and to secure, in a future parliament, a candid hearing of their appeal, a general election affords to every member of the profession an opportunity of contributing his aid, by directing the attention of candidates and representatives to the important subjects alluded to in this address.

"3. *Information to be publicly circulated*.—The committee propose also, from time to time, to circulate information on the past and present state of the profession, and on the manner and extent in which the public interest is thereby affected.

"If all, or even the principal part of these measures shall be adopted, well supported by the profession, and followed out with vigour,—tempered at the same time with the discretion which the subject so obviously requires,—the committee entertain a confident hope, that the day is not far distant when many of the hindrances to the attainment of justice shall be removed, when the tone of public feeling towards the profession will be changed, and the character and station of the solicitor placed upon that honourable eminence to which not only is he justly entitled, but which the public interests require that he should occupy.

"The committee subjoined a list of the committee of management,<sup>b</sup> and of the present supporters of the association, many of whom are also members of "The Incorporated Law Society;" and every member of the profession is earnestly requested to state his views on the subject, and to signify whether he is willing to join the association."

This address, we understand, increased the number of members in town and country to little short of one thousand.

## PRACTICE IN THE COUNTY COURTS

### HARDSHIP OF IMPRISONMENT.

*To the Editor of the Legal Observer.*

SIR,—The article in your number for Dec. 11, on the subject of the punishment inflicted by the new law upon a debtor who may be unfortunate rather than fraudulent is very just as a condemnation of those who would advocate a more severe Law of Debtor and Creditor. I cannot help remarking, however, that the present law (as put in force by some of the judges of the County Courts) is even more severe than the observation of the writer of that article would seem to be aware of, for some of the judges commit to the "House of Correction," thus degrading a poor debtor to the very level of a felon!

<sup>b</sup> See the List, 34 L. O. p. 42.

The act certainly says, common gaol or house of correction; and this would give the judge a discretion to commit fraudulent debtors to the house of correction, and unfortunate ones to the common gaol for debtors, and not for felons.

I read a late case, where a surgeon was summoned, but was unable to attend, as he was engaged in a midwifery case. His wife, however, attended for him, and promised to pay half the debt of 6*l.* in two or three weeks, but the judge ordered him to be committed to prison for non-attendance.

A gentleman of any profession—in the law, physic, or divinity,—may be summoned on a judgment debt, which being unable to pay—probably because he cannot collect the debts due to himself in sufficient time,—instance a surgeon whose bills are usually payable at Christmas, or a solicitor, when causes are ended; and yet, without any charge or pretence of fraud, they may be committed to the "House of Correction," to the ruin of their position, and a degradation that might drive them mad!

Can such a state of the law have been contemplated by the humanity of the Lord Chancellor, who is known to advocate a total abolition of imprisonment for debt?

CIVIS.

### JURISDICTION AS TO JUDGMENT DEBTS.

Can an action be commenced by *plaint* under the 58th (or other section) of the New County Courts Act, on a judgment obtained in the Exchequer, or other superior court, where the debt and costs recovered on such judgment do not exceed 20*l.*? See Com. Digest, title Prohibitions (A).

T. W.

[See the report of the case, p. 219, *post*.]

### LAW APPOINTMENT.

THE Right Honourable the Speaker has appointed Thomas Erskine May, Esq., Barrister-at-Law, to be Taxing Master of Costs on Private bills in the House of Commons.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

*Anon.* Nov. 18, 1847.

#### TRUSTEE ACT.

*The court will not entertain an application under this act in the first instance.*

Mr. Metcalfe moved, under the 10 & 11 Vict. c. xcvi., for an order to pay a sum of money into court, without which he said he had been informed the Accountant-General would not receive the money. He was proceeding to state the facts of the case, but

Lord Langdale, after having ascertained that

no application had been made to the Accountant-General, refused to entertain the motion, observing that the act expressly directed that the money should be received, and the parties must go to the Accountant-General in the first instance.

*Rowley v. Adams.* Nov. 18, 1847.

#### LEASE.—DEFENDANT.—PROCESS.

*The process to compel a defendant in a cause to execute a lease settled by the Master is the same as in the case of other parties.*

*The court will not make a four day order against him in the first instance.*

In this case Mr. Erskine moved for a four day order against George Wyatt, a defendant in the cause, to compel him to execute a lease which had been settled by the Master, and which, as was alleged, the defendant had on several occasions been applied to to execute, but without effect.

Lord Langdale said, that there must be the same process to compel a defendant to the cause to execute a lease as to compel its execution by any other person. He would make an order that the defendant do execute the lease, but the subsequent process must be in the common form.

### Vice-Chancellor of England.

*Boyd v. Boyd.* Dec. 15, 1847.

#### AMENDMENT OF BILL.—EXCEPTIONS IMPERTINENCE.—APPEAL.

*Where an appeal from a decision of the Master on exception for impertinence in an answer was pending: Held, that in such a case a special application ought to be made to the court for liberty to amend, without prejudice to the appeal, and not a simple application to amend before the Master.*

THIS was a motion in behalf of the plaintiff that he might be at liberty to amend his bill, by adding parties, and inserting statements therein that such parties were proper parties, praying no further answer to the amendment—but that such amendment might be made without prejudice to certain exceptions for impertinence which had been taken by plaintiff to the answer of one of the defendants, and which exceptions were then on appeal to the Lord Chancellor.

Mr. Stuart appeared on the motion.

Mr. J. Parker, contra, contended that the plaintiff was applying for a special order to the court, when in fact it ought to have been an order of course before the Master, *Woodroffe v. Daniel*, 9 Sim. 410. The motion was nothing but one to amend *simpliciter*; it was quite impossible that amending the bill could prejudice an appeal pending for impertinence; at all events the order should be made without costs.

The Vice-Chancellor made the order, but without costs, saying he thought the plaintiff was right in making his application to the court.

### Vice-Chancellor Knight Bruce.

*Morris v. Bull.* Dec. 8.

#### PRACTICE.—PAYMENT OF PURCHASE MONEY.

*Under special circumstances the court will allow purchase money to be paid into court, without acceptance of the title.*

Nalder, on behalf of a purchaser under a decree in this cause, moved for leave to pay into

court his purchase money, without prejudice to any question as to the title to the purchased premises, and that he might be let into possession.

F. Bayley, for the plaintiff, did not object to the order being made as asked, but

The Vice-Chancellor said that he could not make the order as to the possession; with regard to the payment without prejudice to any question as to the title, he was now informed that the rule was not inflexible that the purchaser could not pay his money without accepting the title, but that the money might under special circumstances be paid in without prejudice. As in this case the order was applied for to stop interest, he would make it.

### *Sibbering v. Earl Balcarras.* Dec. 1.

#### PLEADING.—DESCRIPTION OF PLAINTIFF.— SECURITY FOR COSTS.

J. V. Price moved that the plaintiff should give security for costs in consequence of the description of the plaintiff's residence being insufficient. The description was as follows: "Late of Blackrod, in the county of Lancaster, but now working on the line of railway between Sheffield and Manchester, labourer."

Hargrave, on behalf of the plaintiff, contended that the description was sufficient, but

The Vice-Chancellor considered otherwise, and said that the plaintiff must give security for costs, unless he thought proper to amend, paying the costs of this application.

### Queen's Bench.

(Before the Four Judges.)

*Cumming v. Ince.* Mich. Term, 1847.

#### INSANITY. — CONTRACT. — COUNSEL AND ATTORNEY.

*A person charged as a lunatic made (with the sanction of her counsel and attorney) an agreement to dispose of her property in a certain manner. The agreement was made pending an inquisition into the fact of her lunacy. She afterwards brought an action to recover the deeds delivered up under the agreement. Held, that she was entitled to recover them.*

*In such a case it is a proper question to be left to the jury, whether the plaintiff made the agreement of her own free will, or through the recollection of her past confinement as a lunatic and a fear of the renewal of that confinement.*

THIS was a proceeding by interpleader. The plaintiff had brought an action against the trustees under an agreement made between herself and her daughters, the present defendants, to recover from those trustees possession of the deeds relating to her property, which deeds had in virtue of the agreement been delivered up to the trustees. The trustees disclaimed all interest, and the daughters were made the defendants in an issue directed to try whether



the plaintiff had of her own free will made the agreement in question. The cause was tried before Mr. Justice Erle, when a verdict was found for the plaintiff. A rule had since been obtained to set aside this verdict. The court took time to consider the judgment. The facts of the case and the questions raised on argument are sufficiently stated in the judgment.

*Lord Denman*, after the court had taken time to consider, delivered judgment in the case. The question in this case arose upon the trial of an issue directed under the Interpleader Act, to determine whether the plaintiff, notwithstanding an arrangement made by her, was entitled to the possession of certain deeds settling and disposing of her property. We are clearly of opinion, that her title to the property was not open to inquiry at the trial, independently of the effect of that arrangement, which was the subject of the issue in question. His Lordship stated the nature of the arrangement to be a disposition of the plaintiff's property, to take place after her death, in favour of her daughters, the defendants, by whom a commission of lunacy had been issued against her, under which commission she was taken before a commissioner of lunacy, and a formal inquiry into her sanity was instituted. The proceedings on that inquiry were terminated by this arrangement. On the trial of the issue it was argued for the plaintiff, that she could not be bound by this arrangement, as it was made whilst she was under duress, that she had been confined in an asylum, that her health had been affected by such confinement, and that she acceded to the arrangement only through fear of the confinement being renewed; for though she was permitted to go at large during the inquiry before the commissioner, the result of that inquiry, if it terminated unfavourably for her, would be to place her again under restraint. For the defendants, it was contended, that whatever had been done was done under a legal process, was lawful and was in good faith, and that though there had been a previous confinement, it was at an end at the moment when the arrangement was made; that her interests had been properly consulted, and that it was a rule of courts of justice to sustain arrangements made in them, upon the advice and sanction of counsel. There is no doubt that great weight is due to these considerations, and they would perhaps be decisive in cases where both parties were free and competent persons. But when one of the parties is expressly declared by the others to be lunatic, and is therefore threatened with personal restraint, it cannot be said that they meet upon equal terms. The object of a commission of lunacy is to declare the person who is the subject of it incompetent to do any legal act, to take from such a person all his power and to transfer it to another. How then can such a person be treated as fit to negotiate an agreement. The defendants can hardly maintain the plaintiff's competency in the face of their own proceedings; but if she was a competent person to make the arrangement, she is also a

competent person to retain possession of the deeds, and ought not to be deprived of them. If, being competent, she was induced by the fear of confinement to execute these deeds, then her signature to them was obtained by a direct interference with her personal freedom, and how can we say that it was not obtained by duress? That her counsel thought this the best arrangement for her interest, is a matter which we need not question; but they are not entrusted, by the mere fact of being her counsel, with any power over her person and property. Their rights are derived from her alone, and so long as she is perfectly at liberty she may authorize them to act for her; but as she was at that time, by the hypothesis of the commission, incompetent to act for herself and incompetent to make any contract, she was incompetent to authorize them to give their sanction to any contract for her. There was an objection to the mode in which the learned judge left the case to the jury. He said the question was, whether the plaintiff had made the arrangement of her own free will, and told the jurors that if she had made it under a recollection of her past confinement, and under a fear that that confinement would be renewed, then she could not be said to have made it of her own free will, and it could not be sustained. We think that the case was properly left to the jury, whose verdict we see no reason to disturb. Though the peculiar facts of this case are not the same as the facts in some of the cases referred to in the arguments, we think that our judgment may properly be considered as in support of them, and not at variance from them. Some amicable arrangement may yet be made favourable to the interests of all the parties concerned. In the meantime the rule for setting aside the verdict for the plaintiff must be discharged.

*Spooner v. Payne.* Michaelmas Term, 1847.

PRACTICE.—RULE OF COURT UNDER 1 & 2 VICT. c. 110.—EXECUTION.

*A rule of court under 1 & 2 Vict. c. 110 for the payment of costs may be enforced on a writ of ca. sa., after the expiration of a year and a day from the time such rule was made without a writ of sci. fa., or special leave of the court being first obtained.*

An award having been made unfavourable to the defendant, a motion was afterwards made to set aside the award, which was discharged with costs. These costs having been ascertained, and the Master's allocatur made, in February, 1845, a rule of court was made for the payment of them, which not being obeyed, a *ca. sa.* issued on the 17th November, 1846, and the defendant was arrested on the 26th. At the same time there were other detainers lodged against him. In July last the defendant became insolvent, and an order was made vesting his property in the plaintiff. In August a summons was taken out before Mr. Baron Platt calling upon the plaintiff to show cause why the writ of *ca. sa.* should not be set aside for irregularity, and the defendant



discharged out of custody, which summons was discharged. A similar application having been made to this court,

Mr. Whitehurst and Mr. Miller showed cause. The alleged ground of irregularity is that the order for the payment of the costs of the motion to set aside the award having been made more than a year and a day previous to the arrest of the defendant, that there must be a writ of *sci. fa.* before the writ of *ca. sa.* can issue. The statute 1 & 2 Vict. c. 110, by section 18, enacts that rules of common law and orders of the Lord Chancellor, &c., whereby any sum of money or any costs, charges, &c., shall be payable, shall be deemed judgment creditors; and all remedies hereby given to judgment creditors, are extended to persons to whom money is due under such orders or rules. Section 19 still keeps up the distinction between rules and judgments. These rules and orders are only to have the effect of judgments for the purpose of enforcing them. A *sci. fa.* is only necessary in matters of record enrolled, (2 Inst. 470,) and in practice these rules never are enrolled. Before the statute of Victoria passed the only mode of enforcing a rule of court was by attachment, which did not give possession of the goods of the party, and the late statute was intended to remedy that defect. Attachment might have issued at any time by leave of the court. In *Farmer v. Mottram*,<sup>a</sup> Tindal, C. J., said, a rule of court under the 1 & 2 Vict. c. 110, s. 18, is not a judgment for all purposes, but merely gives those in whose favour it is made a better remedy than they had before. He also contended, that this being only an irregularity, that the application was made too late. *Blanchenay v. Burton*.<sup>b</sup>

Manning, Serjeant, contra. The arrest of the defendant under a writ of *ca. sa.* was not only irregular but void, by reason of no writ of *sci. fa.* having been taken out. An order of court is now assimilated to a judgment by the 1 & 2 Vict. c. 110, and section 20 gives the court power to issue such writs as may be deemed necessary or expedient for giving effect to the provisions of the Act. After the lapse of a year and a day from the time of making the rule of court, it is necessary before execution issues that some means should be adopted to ascertain that the debt has not been satisfied. In the case of an attachment there was always an application made to the court stating that the debt had not been satisfied. For the purpose of showing that this was not a mere irregularity, he cited *Reynolds v. Newton*,<sup>c</sup> *Goodtitle v. Badtittle*,<sup>d</sup> *Parsons v. Loyd*.<sup>e</sup>

Lord Denman, C. J. It seems very desirable that the actual course of practice in all the courts should be ascertained before we decide this case. We will, therefore, inquire into the matter before we decide.

*Cur. ad. vult.*

Lord Denman, C. J., afterwards delivered

<sup>a</sup> Dowl. and Lownd. 781.

<sup>b</sup> 4 Q. B. R. 707. <sup>c</sup> 1 Gale & Dav. 153.

<sup>d</sup> 9 Dowl. 1009. <sup>e</sup> 3 Wilson, 341.

the judgment of the court. This was an application to set aside a writ of execution and to discharge the defendant out of custody, on the ground that a writ of *ca. sa.* issued on a rule of court under the 1 & 2 Vict. c. 110, made more than a year before, without a *sci. fa.* or special leave of the court first granted. But we are of opinion that no *sci. fa.* or special leave of the court was necessary by that Act, or upon any legal principle; and upon inquiry we find that according to the practice which prevails these proceedings are regular, and on that ground, therefore, this rule will be discharged.

Rule discharged.

### Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

*Reg. on the prosecution of Rogerson v. Grimshaw.*  
Nov. 18 & 22, 1847.

CORONER OF A BOROUGH.—CORPORATE OFFICER.—COSTS OF A RELATOR UNDER 9 ANNE, c. 20.

*A coroner of a borough appointed under the 62nd section of 5 & 6 W. 4, c. 76, is not a corporate officer within the meaning of the 9 Anne, c. 20, and therefore the relator to a quo warranto to determine whether the office of coroner to a borough is properly filled, is not entitled to his costs on issues found for him.*

In this case an information in the nature of a *quo warranto* had issued against the defendant, commanding him to show by what authority he exercised the office of coroner for the borough of Wigan. The defendant pleaded several pleas, on one of which four issues were raised by the relator, which went down to the assizes, and on a trial before Mr. Justice Creswell, at Lancaster, two of these issues were found for the defendant, and two for the relator, who subsequently entered up judgment upon them for his costs under 9 Anne, c. 20, s. 5. Earlier in the Term *Coutling* obtained a rule *nisi* to set aside so much of the judgment as awarded costs to the relator, on the ground that the office of a coroner to a borough, appointed in pursuance of the provisions of the Municipal Corporations' Act, (5 & 6 W. 4, c. 76,) is not a corporate officer within the meaning of the 9 Anne, c. 20; and, therefore, that the relator was not entitled to enter up judgment for his costs under that statute.

Martin, Q. C., and Pickering, now (18th Nov.) showed cause, and contended—*first*, that the office in question was an office within the meaning of the act 9 Anne, c. 20; and *secondly*, that even if the court should think that it was not, still, as it was a difficult question, the court would not dispose of it on motion, but would discharge the rule and leave the defendant to his writ of error. With regard to the office itself, before the Municipal Corporations' Act, (5 & 6 W. 4, c. 76,) the mayor of the borough exercised the office under the charter by virtue of his appointment as mayor, and therefore the

office of coroner would clearly have been a corporate office at that time. The words of the 1st section of the 9 Anne, c. 20, are:—"Whereas divers persons have of late intruded themselves into, and have taken upon themselves to exercise, the offices of mayors, bailiffs, portreves, and other offices, within cities, towns corporate, and places within that part of Great Britain called England and Wales." Now these words would clearly include the office of coroner, and the only question then is, whether the Municipal Corporations' Act, (5 & 6 W. 4, c. 76,) made any difference in this respect. Now the appointment of the coroner to all boroughs applying for a separate Quarter Sessions under that act, of which the borough of Wigan was one, is under the 62nd section of the act, which vests the appointment in the town council, and his expenses are paid out of the borough fund, and therefore is as much a corporate officer as the recorder, who it has been decided is a corporate officer. The only difference made by the Municipal Corporations' Act is, that the offices of mayor and coroner are now executed by two persons appointed by the council, instead of by one, as was formerly the case. Several cases were cited on the other side when this rule was moved:—*R. v. Wallis*, 5 Term Rep. 375; *R. v. Hall*, 1 B. & C. 237, and *R. v. Williams*, 1 Burr. 402. But, if these cases are examined, they will be found not to be analogous.

*Cowling*, contra, contended that the coroner was an officer of the Crown, and not a corporate officer, his duties being wholly unconnected with the corporation; he had to act as sheriff, to find treasure-trove, and return the number of his inquests to the Crown, and was in no way responsible to the corporation.

*Cur. ad. vult.*

*Patteson, J.* (Nov. 22.) I have looked at the acts of parliament and the cases bearing upon this subject, and whatever question there may have been formerly in respect to the coroner being a corporate officer, from the circumstance of the mayor holding that office under the charter, is not material; indeed the question then could not very well have arisen, as the two offices were united in the same person. The Municipal Corporations' Act, however, destroyed the character of the old office of coroners in those boroughs, for it provided that where there are Quarter Sessions established a coroner is to be appointed. It seems to me that the coroner, although appointed by the corporation, is in truth an officer of the Crown, and not a corporate officer; his duties have reference to the Crown, and not the corporation. Not being, therefore, in my judgment, a corporate officer, I think the relator is not entitled, under the statute of 9 Anne, c. 20, to his costs. The rule must therefore be made absolute.

Rule absolute.

### Common Pleas.

*Sheldon, appellant, and Fletcher, respondent.*  
Michaelmas Term, Nov. 11th, 1847.

### OBJECTION.—SUFFICIENT STATEMENT OF PLACE OF ABODE.—QUESTIONS OF LAW AND FACT.

*In a notice objecting to a party's right to be put on the register of voters for the borough of Cheltenham, that borough being all within the parish of Cheltenham, the objector's place of abode was stated to be "5, Sherborne Street," and then was added "on the list of voters for the parish of Cheltenham." Held, that such description of the place of abode appeared on the face of the notice to be sufficient in point of law, and as the revising barrister had decided that it was sufficient in point of fact, his decision was conclusive, and must be affirmed.*

*Whether from the generality of the description of the objector's place of abode, it can be said to point sufficiently to a particular locality, may be a question of law, but where a certain locality appears to be referred to, the question of whether the description is sufficient to give the information required by the 6 Vict. c. 18, sec. 17, is one of fact upon which the decision of the revising barrister is conclusive.*

JOHN FLATCHER objected to the name of Charles Sheldon being retained in the list of voters for the borough of Cheltenham. The notice of objection was in the following form.

"To Mr. Charles Sheldon, 1, Olney Place.

"I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of Cheltenham. Dated this 21st day of August, 1847.

"JOHN FLATCHER,

"of 5, Sherborne St.

"On the list of voters for the parish of Cheltenham."

It was contended on behalf of the person objected to, that the notice of objection was defective in that it did not show in what town or parish Sherborne St. was situate, there being other parishes within the distance of seven miles containing streets, though it was not shown that there was any other Sherborne St. than that in the parish of Cheltenham. The borough of Cheltenham consists of the parish of Cheltenham only, and the names of the whole of the voters for the borough are comprehended in one list, viz., those entitled to vote in respect of property situate within the parish of Cheltenham. The name of John Fletcher, the objector, appeared in the list of voters, and his place of abode, and the local description of his qualification, were therein described, viz., "5, Sherborne St." It was not suggested, that in fact there was any other place called Sherborne St. in the borough of Cheltenham, or that it was not perfectly well known, or that any practical inconvenience followed from the omission of the name of the town or parish. The revising barrister thought the notice of objection sufficient, and the person objected to, having failed to prove his right to have his name retained in the list of voters,

he expunged it. The cases of twenty-six other persons objected to by the said John Fletcher upon similar notices, and whose names the revising barrister expunged from the list, were consolidated with the principal case. If the Court of Common Pleas should be of opinion that the notices of objection are sufficient, the register was to remain unaltered, if they should be of a contrary opinion, the names of all the parties so expunged were to be restored to the register.

*Byles*, Serjeant, for the appellant. The question in this case arises under the provisions of the 6 Vict. cap. 18, sec. 17. That section enacts that every objector "shall, on or before the 25th day of August in that year, give, or cause to be given, a notice according to the form numbered in the said schedule (B), or to the like effect to the overseers," &c., and "shall give, or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said schedule (B), and every notice of objection shall be signed by the person objecting." The latter form, as given in the schedule referred to, requires the party's place of abode to be stated after the signature of the name, and it is submitted, that in order to comply with the 17th section and such form, the name of the town (Cheltenham) should, in the present case, have been added to "5, Sherborne St." The case of *Woollett v. Davis*, 4 Com. B. 115, 1 Lutw. Reg. Cas. 607, although decided with reference to a county, and not, as here, to a borough voter, is, nevertheless, a strong case in point. There the objector described himself as of "The Oaks on the register of voters for the parish of St. Woollos," and the description of the place of his qualification in the register of votes was "The Oaks," and it was holden that the notice and the register could not be coupled together, and consequently, as the description of the place of abode in the notice itself was too general, the notice was insufficient.

*Keating*, for the respondent. \*The decision in the case just quoted does not apply to the question now before the court. That decision merely amounts to this; that a description in the notice, insufficient in itself, cannot be assisted by having recourse to another document. In giving judgment in that case, *Wilde*, C. J., says, "It appears, from this case, that the controversy before the barrister was, that the statement contained in the notice was insufficient, but it was also contended that the notice also stated that the objector was resident in the parish of St. Woollos, and that the party receiving the notice might, by resorting to the register have learned that the Oaks was in the parish of St. Woollos, and that therefore the notice was sufficient. The barrister admitted this to be the case, and held that the notice, though insufficient in itself, might be made valid by being coupled with the register, and as the two documents so coupled together furnished the means of ascertaining that the objector's place of abode was at 'The Oaks,'

in the parish of St. Woollos, he held that the notice was in sufficient conformity with the statute. We are of opinion that this decision is wrong, and that the notice of objection is not made in the form or to the effect required by the statute. The party receiving the notice is not bound to take the trouble of resorting to any other means than the notice itself in order to obtain information as to the place of abode of the party sending it." The present case differs from that in this material respect namely, that here the revising barrister finds the notice of objection sufficient. The sufficiency of the notice must always depend on the particular circumstances of each case. In the case of *Knowles v. Brooking*, 2 Com. B. 226, 1 Lutw. Reg. Cas. 461, a notice of objection signed with the objector's true place of abode, was held sufficient, although in that respect it differed from the place of abode as stated in the register.

*Maule*, J. Suppose the objector happened to be some person of eminence, whose name was well known, a general description might, in the opinion of the revising barrister, afford sufficient information. Here the barrister seems to have proceeded on the effect of some evidence which, however erroneously admitted, I am inclined to think the court has no power to interfere with.

*Keating*. It cannot be doubted, taking the whole of the case together, that the barrister thought the party objected to perfectly well understood the description in the notice, and therefore having, as a matter of fact, found that the notice was sufficient, the court, it is submitted, is not now in a situation to deal with his decision. The case of *Gadsby v. Warburton*, 7 M. & Gr. 17; 1 Lutw. Reg. Cas. 136, is an authority showing what should govern the revising barrister in cases of this nature.

*Byles*, Serjeant, in reply. On the authority of *Woollett v. Davis*, and *Walter v. Haynes*, 1 Ry. and Moo. 149, it is submitted that, the question raised in this case is one of law and not of fact merely. The revising barrister does not decide on the place of abode as stated in the notice alone, but also on several other facts, and that he is not at liberty to do.

*Wilde*, C. J. This question has been attended with some difficulty with reference to the consequences which may arise from our decision upon it. The 17th section requires an objector to give a notice stating his place of abode, &c. Now, is the sufficiency of the notice in that respect a matter of law or of fact? I think both may be involved. To give a man's place of abode requires a description pointing to that locality where he may be found, and whether that description is sufficient for that purpose may be a matter of law, as where a man said he lived in King-street, and no more, there being many such streets in England, a party would not know in what place he was to look for him; and either in that case or where the revising barrister found something to be a sufficient description of a place of abode, which on the face of it could not be properly considered so from its extreme generality,

the question of sufficiency would be one of law. But if the description were such as on the face of it had sufficient particularity to import some distinct locality applicable to the person giving the notice where he may be found, then whether it was a description of the place of abode, answering the requisites of the statute may be a question of fact for the conclusive decision of the revising barrister. In *Woollett v. Davis*, the court held the notice insufficient on the ground that the barrister had decided otherwise as a matter of law, thinking that the description in the notice might be coupled with that in the register of voters. The court there said the barrister had been mistaken in point of law, and that the notice must contain within itself a sufficient description of the place of abode, and could not be assisted by coupling it with the register. In the case of *Gadsby v. Warburton*, the notice of objection described the place of abode as "Poplar Grove, Didsbury;" Didsbury being a township within the polling district of Manchester; and the revising barrister held the notice to be insufficient, considering that something more, such as "Lancashire," or "near Manchester," should have been added to the place of abode. That decision the court treated as raising not the question of whether the notice was insufficient practically to meet the objects of the statute; but whether, though sufficient in that respect, it could be deemed a description of the place of abode sufficient in point of law, without the addition of the county or the neighbouring large town. There appeared in that case nothing which showed that the revising barrister thought the notice on the face of it insufficient in point of fact, and the court therefore, thinking the requirement of any addition to the description in the notice wrong in point of law, reversed the barrister's decision. The notice in the present case describes the place of abode as "5, Sherborne Street." Now the question is, where is Sherborne Street? In what town is it situated? If before the revising barrister evidence had been offered to show that no such place could be found as Sherborne Street, in Cheltenham, or no such person there as the objector, the objector would not have been allowed to say then that it was elsewhere. But where, as here, the notice is confined to a qualification within the borough of Cheltenham, and no other evidence is given, ought not the description of the street to be understood as referring to that town with which the subject matter of the notice is connected? I think it ought. Taking then the notice as applicable to the borough of Cheltenham, and reading Sherborne Street as in Cheltenham, this is a sufficient description of the place of abode in point of law, and the revising barrister has decided that it is sufficient in point of fact, to supply the objects of the statute, and his decision in that respect is conclusive. On the whole, therefore, the decision of the revising barrister must be affirmed.

*Coltman, J., Maule, J., and Williams, J.* concurred. Decision affirmed.

## Court of Exchequer.

(Before Mr. Baron Platt.)

*Ransom v. Price.* November, 24, 1847.

### COUNTY COURTS.—COSTS.

*The County Courts Act has not repealed the provisions of the Middlesex Court of Requests Act for entering a suggestion to deprive a plaintiff of costs.*

IN this case a verdict having passed for less than 40s., a rule to show cause why a suggestion should not be entered under the Middlesex Court of Requests Act to deprive the plaintiff of costs was obtained on a former day.

*Lush* showed cause.

*T. Jones*, contra.

*Platt, B.*, said, that he was clearly of opinion that so long as any suit was pending in one of the superior courts which had been commenced against the policy of the Middlesex Court of Requests Act, this act continued in force with relation to it, and he should therefore grant the rule for entering the suggestion. If he should be wrong in so doing, the plaintiff would have no reason to complain, as the objection would be on the record, and he could take advantage of it by a writ of error; whereas, if he refused the rule and was wrong in so doing, the defendant would have no remedy.

Rule for entering the suggestion absolute.

*Francis v. Rance.* Nov. 19 & 25, 1847.

### COUNTY COURTS.—JUDGMENT.

*Semble, that a party who has recovered judgment for a debt in one of the superior courts cannot sue upon the judgment in a County Court.*

*Naylor* moved for a writ of prohibition to the County Court of Cambridge, against proceeding further in an action of debt founded on a judgment of this court. Though this action might be within the letter of the statute, as a "personal action in which the debt or damage does not exceed 20*l.*," yet, as the superior courts were jealous of their jurisdiction, and did not allow inferior courts to intermeddle in the enforcement of their judgments, and as the Court of Queen's Bench interfered to prohibit the Court of the Tower of London from entertaining a suit founded on its judgment, though the matter was otherwise within the jurisdiction of the inferior court, (2 Rol. Rep. 54,) so this court would interfere to stop the County Court of Cambridge from proceeding on one of its judgments. It was obviously the intention of the legislature not to give the County Courts this jurisdiction, as by the 98th section express provision was made for enforcing in one of these courts the judgments of any other of them, or of any court abolished by the new act, by summoning the debtor before the court, and causing him to be imprisoned for 40 days if he did not give a satisfactory answer; and no such provision was mentioned with respect to the judgments of the superior courts. Indeed it would be absurd in the legislature to do so, as they had already by the Bankrupt Act, 8 & 9 Vict. c. 127, provided the same course of proceeding with respect to such

judgments, only that the party should be brought before a Bankruptcy Court instead of a County Court; and by the act of last session this very jurisdiction was specially transferred to the judges of the County Courts sitting as Commissioners of Bankruptcy and Insolvency. As the plaintiff had already in his hands a cheap and easy mode of executing his judgment, he could have no object in bringing this action, except to increase the costs; for he could get costs against the defendant in this action in the County Courts, though he could not, or rather might not, in the superior courts.

*Alderson, B.* The question is, how do you get out of the positive words of the act?

*Pollock, C.B.* There is a general jurisdiction given to these courts in all personal actions where the debt or damage is under 20*l.*, with the exception of ejectment, libel, actions for malicious prosecutions, or actions involving the right to tolls or fairs, or the validity of devises. The substance of this provision is, that, with the exception of these excepted cases, where the debt or damage is under 20*l.* these courts shall have jurisdiction.

*Naylor.* The Court of the Tower of London had a much larger jurisdiction, (4 Co. 251.) yet was prevented from enforcing the judgment of a superior court. Another objection to the County Court entertaining such an action was, that it had no means of proving the record. Heretofore, in all actions founded on judgments of the superior courts the venue was laid in Middlesex, so that on the plea of *null tiel record* the record might be inspected, as no secondary evidence was sufficient. In this case he had pleaded *ore tenus* before the County Court *null tiel record*, in order to raise this very point of the inadmissibility of secondary evidence, but the judge received an examined copy of the judgment as a sufficient proof of it.

*Alderson, B.* The strongest argument is that founded on the necessity of laying the venue in Middlesex in actions founded on the judgments of the superior courts. When an action is brought in this court on one of our own judgments we inspect our own records; and when on a judgment of one of the other two superior courts, the record is sent here to us for inspection by a mittimus. What way has a County Court of proving those judgments? Are the records of the superior courts to be sent galloping by railway through England in attendance on the County Courts? I do not see the necessity of such actions as this, especially as it is so easy to enforce execution of the judgment of the superior courts.

*Parke, B.* There seems to be some ground for supposing that a debt on record is not "a debt" within the meaning of this act. In Comyn's Digest, tit. Debt, there is a reference to a case in the 6 Ed. 3, which may throw some light on the subject, but to which I have not time to refer now.

*Pollock, C.B.* We will take time to consider whether we shall grant your rule.

On the last day of Term the rule was granted. Rule nisi granted.

### Court of Bankruptcy.

*In re Quincey.* Nov. 9, and Dec. 18, 1847.

#### BILL TRANSACTIONS BY BANKRUPT.

*A bankrupt who has carried on an extensive business by discounting bills and accommodation bills, cannot be considered to have conducted himself properly as a trader, and is not entitled to his certificate immediately.*<sup>a</sup>

THE bankrupt, W. Quincey, who carried on the business of a tin-plate worker in Old Street, St. Luke's, came up for his certificate on the 9th November last, before Mr. Commissioner Holroyd.

Mr. Bagley was heard, on the part of the assignees, in opposition to the bankrupt's certificate.

Mr. Lawrence supported the bankrupt.

Messrs. Crowder and Maynard were the solicitors to the fiat.

The facts of the case are sufficiently disclosed in the judgment of the learned commissioner, which was pronounced on the 18th December.

Mr. Commissioner Holroyd said:—I have carefully considered all the circumstances of the case, and I feel bound to say that the embarrassments of the bankrupt must be attributed to his own fault, and not to the casualties of trade or unavoidable misfortune. His trade, that of a tin-plate-worker, was a most extensive one. I believe it was one of the largest establishments of the kind in London; but, although it may be said to have exhibited much of "the grand and marvellous," as the result has shown, it certainly embraced little of the solid or the profitable. It appears to me that this lamentable consequence is mainly to be traced to that most ruinous of all resources—excessive engagements in bill transactions, many of which were accommodation and renewals thereof from time to time. These were truly stated by the learned counsel, for the assignees to be "heavy, continuous, and extensive." In April, 1840, I think, the bankrupt was under acceptances to one house to the amount of 30,000*l.* A system of apparently unrestricted accommodation had been going on for some years between the bankrupt and some other trading firms in succession. At the time of the bankruptcy his *bond fide* debt to Messrs. Ricketts, James, and Co., for goods bought and money lent by the three successive firms of Vigors and Co., Trevelyan, James, and Ricketts, and James and Co. was about 19,000*l.* This was met by bills, many of which had been renewed from time to time; and there were other acceptances of the bankrupt in circulation for the accommodation of Ricketts, James, and Co., amounting to about 12,000*l.* The total amount of credits for value and liabilities is

<sup>a</sup> Although no point of law, beyond that pointed out in the introductory note, can be said to have been expressly determined in this case, the learned Commissioner in his judgment has expounded principles of so much importance, and such general applicability, that we deem it deserving of attentive perusal, and accordingly, given it a place amongst our reports.

above 62,000*l.*, by far the greater portion of which is represented by bill-holders; and the assets will range between 10,000*l.* and 12,000*l.* Now, a business cannot be deemed prosperous unless the value of the annual produce exceeds that of the annual consumption. The present case, unfortunately, continued for years previous to the bankruptcy to exhibit a reverse picture. The natural consequence of this would have been a decrease in the capital, and a corresponding diminution in the annual produce. What, then, was the bankrupt's resource? The transactions of his trade were provided for by bills of exchange; and, as his total expenditure very much exceeded his revenue, in order to meet the deficiency, bills to a large amount were drawn or acceptances given, and when they became due were paid by other bills with accumulated interest and commission. This system is repeated from time to time, and further, notwithstanding the inability of the bankrupt to meet his own bills, he became party to a similar course of proceeding for the accommodation of others with whom he had large dealings. That learned and powerful writer, Adam Smith, in speaking of the evils of this system and the loss which must arise from any such operation, says, "The project of replenishing coffers in this manner may be compared to that of a man who had a water-pond from which a stream was continually running out and into which no stream was running, but who proposed to keep it always equally full by employing a number of people to go continually with buckets to a well some miles distant in order to bring water to replenish it." This case, then, appears to me to afford a striking example of the great abuse which may be made in the circulation of paper securities. Let it not be, however, supposed that the court undervalues the facilities afforded to commerce through the medium of bills of exchange. The exchange carried on by this medium has been called "the waters upon which the vessel of commerce floats." But to carry the simile further, it should be remembered that there are "merchant-marring rocks" in every sea, and upon such a reef every trader sooner or later will most assuredly be stranded who continues, year after year, to bolster up his credit by the rediscounting or renewal of bills from time to time, until at length, unable to obtain further assistance, he has to steer his course through a mass of accumulated obligations which must necessarily overwhelm him. Such a trader may be said to "venture madly on a desperate mart," for no house can be permanently supported by such a system. The expedient must fail at last, and ruin be the inevitable consequence. The only excuse made for the conduct of the bankrupt in this respect is, that Messrs. Ricketts and James were his principal creditors, and to have refused acceptance for them would have brought the bankrupt at once into the *Gazette*. Willing as the court may be to make reasonable allowance for the weakness of human nature, it cannot exculpate the bankrupt's conduct. There are cer-

tain general rules of commercial prudence—certain landmarks of right and wrong,—which should regulate the conduct of every trader, and of these none is more important than that as long as he carries on his trade he should do no act at the cost of his independence. Thus he may always be ready to say,—“Let fortune do her worst, whatever she makes us lose, so long as she never makes us lose our honesty and independence.” It is related, that “so high was the general estimation in which the merchants of Italy were held for honour and integrity, that the simple affirmation, ‘*In fede d’un real mercatante*,’ or ‘by the faith of a true merchant,’ was considered one of the most solemn that could be made.” May the character of the British merchant ever stand as high! But what becomes of this boasted faith in the trader who sacrifices his independence for the convenience of a particular creditor? In this case, the bankrupt, not being able now to meet his payments with Messrs. Ricketts and James, and fearing the consequences, incurs further liabilities on their account. Is this right or excusable with a due regard to the interests of his other creditors? Certainly not. In truth, it appears to me to amount almost to an admission that his affairs were in such a state that he ought, without further delay, to have laid a statement of them before his creditors. The bankruptcy, however, was delayed till, *ex necessitate*, it followed that of Messrs. Ricketts and James. His Honour then referred to the incorrect manner in which the books were kept, and referred to the evidence of the bankrupt's own accountant in confirmation of what he stated. The learned commissioner proceeded:—Now, the consequence of this imperfect state of his books is, that there is no one period of time since the 1st of January, 1834, when Mr. Howard retired from the business and the bankrupt commenced carrying it on on his own account, at which it can be made to appear whether he was solvent or insolvent. A further consequence of this is a balance-sheet extending over the whole period of thirteen years. Mr. Lawrence, in his able address to the court on behalf of the bankrupt, said that he had for many years traded prosperously, and occupied a high position in the mercantile world. Do the bankrupt's books support this assertion, or show that he was worthy of such a position? Has he performed what his character and station in the mercantile world required of him? On the contrary, he has altogether disregarded one of the strongest obligations upon him as a trader. I had occasion in a late case to dwell at some length upon the great importance of accuracy and regularity in book-keeping, as well as upon the ruinous consequences of obscurity in this department. If a trader be desirous of securing a correct and satisfactory statement of his affairs, there must be no intermission in book-keeping. To repeat the observations of an able writer upon this subject,—“The principle of book-keeping is of such inflexible rigour that it never admits



of relaxation under any conceivable circumstances, though it adapts itself with equal facility to every possible matter of account." "Traders cannot too often call to mind the proverb, "*Ubi non est ordo, ibi est confusio*." This, which is applicable on most occasions, is universally true in mercantile affairs; and, on this point, I cannot doubt but that the bankrupt's own conscience must be his accuser. The mismanagement of his trade, for we can call it nothing else, when we look to the trade expenses (66,840*l.*) as compared with the profits, (69,195*l.*) 20 per cent. on the net amount of sales, and the excess of his house-keeping and family expenditure, (22,610*l.*) as compared with his net profits, may all, I think, be easily accounted for by the confusion of his accounts, his never "taking stock," and his consequent ignorance of the real state of his affairs. Reviewing the whole of this case, I think the bankrupt was guilty of great negligence and indiscretion in a business which required extraordinary circumspection and prudence. He (the bankrupt) had to compete

with rising establishments similar to his own, but probably of a much less expensive character. I find, also, that the losses sustained by the bankrupt were considerably above 8,000*l.* for bad debts carried to losses, so that some hundreds ought to have been written off every year on that account. The stock also was of a very uncertain nature, and, judging from the losses on the sale under the fiat, its value must always have been precarious. Without nicely scanning the domestic expenses of the bankrupt, it is obvious that they amounted to a sum out of all proportion to what would appear to have been the profits of his trading. As to his profits, he very probably was deceived; but if so, that arose from irregularity in his accounts. Under all the circumstances, and having regard to the high position held by the bankrupt as a trader, which must operate in aggravation of his default, more particularly in his bookkeeping, the court adjudges that the allowance of his certificate be suspended for one year from the day of his application, the 9th of November last.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Court of Equity.

#### PRINCIPLES OF EQUITY.

##### AGREEMENT.

*Injunction*.—If an agreement consists of two distinct parts, one of which the court can enforce, but not the other, and a bill is filed simply for an injunction to restrain the violation of the former part, the court will grant the injunction, notwithstanding it would not enforce the agreement *in toto*. *Rolfe v. Rolfe*, 15 Sim. 88.

See *Partnership*, 3.

##### ANNUITY.

*Payment of unclaimed money.—Presumption of death*.—A sum of money was set apart in 1815, to answer an annuity to a woman then supposed to be resident in India, but who was never afterwards heard of. In 1837 the Master having certified upon presumption that she was dead, but without finding when she died, the court ordered payment of the principal money to the party entitled to it, subject to the annuity. In 1842, the Master having certified upon presumption that she had died in 1822, and that no personal representative had been heard of, the court ordered immediate payment to the same party of the accumulations since that time. And in 1847 it ordered payment of the rest of the fund to the same party, though resident abroad, upon his giving his personal security to refund in case the annuitant or her personal representative should ever establish a claim. *Cuthbert v. Purrier*, 2 Phillips, 199.

Cases cited in the judgment: *Shaw v. Lawless*,

5 Cl. & F. 129; *Finden v. Stephens*, 2 Phill. 142.

##### CHARITY.

1. A scheme relating to a charity which had not been submitted to the Master, but had been sanctioned by the Attorney-General, directed to be carried into effect. Monies belonging to a free school founded by Queen Elizabeth, ordered to be invested in land for the purpose of erecting additional buildings in furtherance of the objects of the charity. *Attorney-General v. Earl of Mansfield*, 14 Sim. 601.

2. *Jurisdiction.—Petition*.—After a decree had been made in a suit by information and bill for the general administration of a charity, one of the objects of which was a free grammar school, the master of the school, who was not a party to the suit, presented a petition in it, with the sanction of the Attorney-General, stating that in 1832, which was five years before the decree was made, the defendants, the trustees of the charity, unlawfully removed him from his office, and praying to be paid the arrears of his salary.

*Held*, that the petition could not be entertained, because it was presented by a person who was not a party to the suit, and involved an important question between the petitioner and the trustees, which was not raised at the hearing of the suit.

*Held*, also, that the court would not have had jurisdiction to determine the question, if the petition had been presented under Sir Samuel Romilly's Act, but that a new suit must be instituted. *Attorney-General v. Corporation of Bristol*, 14 Sim. 648.

## CREDITOR'S DEED.

A debtor conveyed all his property to trustees for his creditors, in consideration of a licence and release granted to him by the deed, and afterwards died. Seven years after his death, a creditor who had notice of the deed shortly after its execution, but did not execute it, filed a bill to be allowed to execute and to have the benefit of it, but the court dismissed the bill, because the debtor could not have the benefit of the consideration. *Lane v. Husband*, 14 Sim. 656.

Case cited in the judgment: *Field v. Lord Donoughmore*, 1 Dru. & Warr. 227.

## DEED, CONSTRUCTION OF

1. *Appropriation of payments.—Feme covert.*—*A. B.*, a married woman, conveyed her separate estate to *C. D.*, in trust to sell, &c., and pay a debt due to him from her, and further advances, not exceeding in the whole 400*l.*, and to hold the surplus for her separate use. *C. D.* afterwards made further advances, far exceeding the limit, part of which was paid upon bills drawn on him by *A. B.*, with directions to charge the same to the account of her separate estate. *Held*, that *C. D.* was not entitled to appropriate his receipts in the first place, in payment of the advances not covered by the security, the court considering that *C. D.*'s receipts could not be considered as indefinite payments, that he had them only for the purpose of paying off the charge, and afterwards for *A. B.*'s separate use, and that upon the true construction of the instruments, *C. D.* was bound to apply the separate estate which he received in satisfaction of the charge and could only consider the surplus after such satisfaction as subject to the disposition of *C. D.* or liable to such ordinary lien as he might acquire by advancing money to her. *Smith v. Smith*, 9 Beav. 80.

2. *Sterling or currency.—Jointure.*—Prior to the passing of the act for assimilating the currencies of England and Ireland, an English lady married an Irish gentleman. By their settlement, which was executed at Bath, where the marriage was solemnized, it was recited that the gentleman had agreed to charge certain of his estates in Ireland with the payment of a rent charge of 1,000*l.* a year to the lady for life, in case she should survive him, but the sum secured to her by the deed was expressed to be 1,000*l.* a year, *sterling, lawful money of Ireland.* *Held*, nevertheless that she was entitled to a 1,000*l.* a year sterling. *Cope v. Cope*, 15 Sim. 118.

Case cited in the judgment: *Lansdowne v. Lansdowne*, 2 Bligh, 60, 78, 79, 89.

3. *Children.*—A settlement directed the trustees immediately after the decease of the survivor of the husband and wife, to transfer the fund unto and amongst all and every the son and sons, daughter and daughters of the husband and wife, and the children of such son and sons, daughter and daughters, in case any of them should be dead, leaving issue, share and share alike; but the child or chil-

dren of such sons of the said son and daughters as should be then dead, were to be entitled only to a parent's share, and in case there should be no child or children of the husband or wife living, at the death of the survivor of them, then in trust to transfer the fund to the survivor, his or her executors, &c.

There were three children of the marriage, but they all died before either of their parents, two of them left children, some of whom survived both their grandfather and grandmother.

*Held*, that the surviving grandchildren were entitled to the fund. *Green v. Bailey*, 14 Sim. 635.

## EXECUTOR.

1. *Liability—Lost debt.*—An executor, having possessed a promissory note for 400*l.*, part of the assets of the testator, retained the note in his possession, without taking any proceedings to recover the amount or the interest for seven years; and at the end of seven years, when the sole residuary legatee came of age, the executor delivered the note to the residuary legatee. The residuary legatee ten years afterwards filed his bill against the executor, charging him with breaches of trust in the administration of the estate. The court, in such circumstances, refused to charge the executor with the amount of the promissory note, or direct an inquiry whether any loss had resulted to the estate by reason of the executor not having taken proceedings to enforce payment of the amount due on the note.

In such a case the executor would not be chargeable, unless it should be found that the amount of the note could have been recovered during the seven years between the death of the testator and the time when plaintiff attained his majority; and if it were found that the amount could have been recovered during that time, still the executor would not be chargeable, unless it should be found that the amount could not have been recovered during the ten years which elapsed after the note had been delivered to the plaintiff. *East v. East*, 5 Hare, 348.

2. *Costs.*—Executors not allowed the costs of an account which had been successfully brought against them by a surgeon for medicines and medical attendance furnished to the testator. *Chambers v. Smith*, 2 Coll. 742.

See *Partnership*, 1; *Specific Performance*.

## FORECLOSURE.

*Mortgage.—Sale of Estate.*—After foreclosure, the mortgagee fairly sold the estate for less than what was due to him. *Held*, that he could not afterwards recover from the mortgagor, upon his collateral personal securities, the amount still remaining unpaid.

Where a debt is secured by mortgage, covenant, and bond, the mortgagee may pursue all his remedies at the same time. If he obtain full payment on the bond or covenant, the mortgagor becomes entitled to the estate; but if he obtain part payment only, he may go on with his foreclosure suit, and foreclose for the remainder. On the other hand, if he foreclose



first, and the value of the estate proves insufficient to satisfy the debt, he may, while the mortgaged estate remains in his power, sue on bond or covenant, but he thereby opens the foreclosure, and the mortgagor may thereupon redeem. *Lockhart v. Hardy*, 9 Beav. 349.

#### FRAUD.

See *Trustee*, 1.

#### INFANT.

1. *Jurisdiction*.—The cases in which this court interferes for the protection of infants are not confined to those in which there is property.

The court may make an order for the delivery of an infant to the party who ought to have the custody of it, on petition as well as under the general jurisdiction upon *habeas corpus*.

A husband, whose wife had three years before absconded with his infant children, applied for an order that the wife's brother, who had assisted in her escape, and had since transmitted to her the income to which she was entitled under her marriage settlement, of which he was trustee, might either produce the children or disclose the place of their concealment, or at least discontinue the transmission of the income. On an affidavit of the brother, that the children were not in his custody, or under his control, the order was refused. *Spence, in re*, 2 Phill. 247.

Case cited in the judgment: *Wellesley, in re*, 2 Russ. 1.

2. *Marriage*.—Upon the marriage of a man with an infant ward in court, who was entitled jointly with her sister to real and personal estate held by trustees in undivided moieties, he, with the sanction of the court, covenanted that upon his wife coming of age, her real property should be settled upon himself and herself, and the children of the marriage, with ultimate limitation in default of issue of the marriage to the heirs of the wife; he also settled the personal property in the same manner, except that there was an ultimate limitation in default of issue to the next of kin of the wife. The marriage took effect, the wife attained twenty-one, and about a month after the marriage died, without issue, and without executing a settlement of the real estate, leaving her sister, who was also an infant ward of court, her sole heiress and next of kin. *Held*, that the surviving sister could not compel a conveyance to herself of her deceased sister's moiety of the real estate, without making compensation to the husband for his loss of that interest in the real estate which he would have taken under the settlement had it been executed by his wife. *Savill v. Savill, Young v. Savill*, 2 Coll. 721.

3. *Maintenance*.—Order made for a liberal allowance for the maintenance and education of a female infant, whose father was living, with a view to her being brought up in a manner suitable to her fortunes and expectations. *Ex parte Williams*, 2 Coll. 740.

#### INJUNCTION.

*Disputed right*.—The court will not generally, in doubtful cases, restrain by injunction the infringement of an asserted legal right until its validity has been established by an action at law, but *sees* where there has been long interrupted enjoyment under a patent, that being regarded as *prima facie* evidence of title.

When the court grants an injunction, the order ought not merely to direct that an action shall forthwith be brought, with liberty to the parties to apply in case of delay, but to give such directions of its own in the first instance as will insure the speedy trial of the action.

An injunction granted pending an action to be brought by the plaintiff, for the speedy trial of which special directions were given, was dissolved on the ground of the plaintiff not having duly complied with those directions. *Stevens v. Keating*, 2 Phill. 333.

See *Agreement : Jurisdiction*, 2.

#### JOINT STOCK COMPANY.

*Priority of incumbrances*.—*Notice*.—On a question of priority of incumbrances of shares, notice to one of a joint stock company is not notice to the company. *A.* held shares as trustee, and executed a declaration of trust, but no notice was given at the office of the company. *A.* afterwards mortgaged his shares to secure his private debt. Notice of this mortgage was given to the company, and was entered in their books. *Held*, that the mortgagee had priority over the *cestui que trust*. *Martin v. Sedgwick*, 9 Beav. 333.

#### JURISDICTION.

1. *Heritable bond*.—The Court of Chancery has jurisdiction to grant an injunction, at the suit of the assignees of a bankrupt, to restrain the obligee under a heritable bond executed by the bankrupt before his bankruptcy from proceedings in the court of session in Scotland to obtain payment of his debt out of a real estate in Scotland belonging to the bankrupt at the date of the bond, and thereby charged with the debt, but it will not exercise that jurisdiction if the circumstances of the case render its interference unadvisable. *Jones v. Geddes*, 14 Sim. 606.

2. *India bonds*.—*Injunction*.—The Court of Chancery has jurisdiction to restrain the India Company from paying the money secured by their bonds to a person who has wrongfully obtained possession of them, or to any other person than the lawful owner of them. *Glasse v. Marshall*, 15 Sim. 71.

See *Charity*, 2; *Infant*, 1.

*Specialty debt*.—*Rent*.—A lessee surrendered his lease and took a new one for a different term and at a different rent, and with different covenants.

*Held*, nevertheless, that the rent accrued under the original lease (the whole of which remained unpaid) was a specialty debt under the covenant for payment of it contained in

that lease. *Greenwood v. Taylor*, 14 Sim. 506.

See *Mortgage*, 3; *Vendor and Purchaser*, 1.

#### LEGACY.

*Vesting*.—*Payment at 21*.—An absolute vested bequest was accompanied with a direction that it should not be delivered till the legatee attained 25. *Held*, that he was entitled to payment on attaining 21. *Rocke v. Rocke*, 9 Beav. 66.

#### LIEN.

See *Partnership*, 1.

#### MARRIED WOMAN.

1. *Settlement*.—A husband had large advances made to him by his wife's father, and had the benefit of a provision made for his wife by her father's will, and afterwards became bankrupt.

*Held*, that his wife, who had no provision except the income of a fund under her uncle's will, should have the whole of that income settled on her for life for her separate use, without power of anticipation. *Gardner v. Marshall*, 14 Sim. 573.

Cases cited in the judgment: *Coster v. Coster*, 9 Sim. 597.

2. *Reversionary interest*.—The tenant for life of a trust fund having consented to surrender her interest to the reversioner, a married woman, and the latter having been examined in court and consenting, the court ordered the fund to be transferred to her husband. *Creed v. Perry*, 14 Sim. 592.

Cases cited in the judgment: *Bean v. Sykes*, 2 Hayes' Conveyancing, p. 640, (5 ed.)

3. A married woman who was entitled to a trust fund in reversion having had the life interest assigned to her, the court ordered the fund to be transferred to her husband, she consenting. *Hall v. Hugonin*, 14 Sim. 595.

4. *Separate maintenance*.—*Provision for future separation*.—*Infancy*.—Whether an antenuptial contract, whereby the intended husband agreed to secure to the intended wife an annuity for her separate maintenance, in the event of his death, or any separation taking place between them during their lives, is void; and if not, whether such contract is valid so far as it is intended to secure an annuity to the wife in case of a separation or divorce for any cause; or whether it is valid to the extent of securing the annuity to the wife in case of desertion by the husband, or divorce without any misconduct on the part of the wife; or whether it is valid only to the extent of securing the annuity to the wife in the event of her surviving the husband—*quære*. *Cocksedge v. Cocksedge*, 5 Hare, 397.

See *Deed, construction of*; *Trustee*, 3.

#### MISTAKE.

*Rectifying contract after execution*.—Premises were sold for the residue of a term, of which both parties at the time supposed that eight years only were unexpired, and the price was fixed expressly on that supposition. It afterwards appeared that twenty years were, in

fact, unexpired at the time of the sale. But a bill by the vendor to make the purchaser a trustee of the term for the twelve additional years was dismissed. *Ohill v. Whittaker*, 2 Phill. 338.

#### MORTGAGE.

1. *Ship and cargo*.—*Commission on sales*.—A broker having taken an assignment of several cargoes in trust to sell them on their arrival, and out of the proceeds to repay himself the amount of his advances, took possession of some of the cargoes, and sold them under the power in the deed, while the rest were sold under an order made in a suit instituted by him to enforce his security, by which it was directed that they should be sold by him in such manner and at such time as he and the receiver in the cause should agree, and in the event of their differing, then as the Master should direct.

*Held*, that in the latter sales he was entitled to the usual commission allowed to brokers employed by the court, but that in the former he was not entitled to any commission, having sold as trustee. *Arnold v. Garner*, 2 Phill. 231.

2. *Production of documents*.—A mortgagee against whom a bill was filed by another mortgagee for redemption and foreclosure admitted the possession of vouchers, consisting of bills of exchange and promissory notes. *Held*, that he was bound to produce them. *Gibson v. Hewitt*, 9 Beav. 293.

3. *Lease*.—*Surrender*.—*Covenant*.—A lessee mortgaged the demised premises, and covenanted, for himself and his heirs, with the mortgagee, his executors, administrators, and assigns, to repay the mortgage money. Afterwards, the mortgagee joined with the mortgagor in surrendering the lease, for the purpose of having a new lease granted to the latter, which they agreed should be assigned to the mortgagee, by way of security for his principal and interest; and that that arrangement should not prejudice any other security that the mortgagee might have for his debt. A new lease was granted to the mortgagor, but he did not make any assignment of it in pursuance of the agreement. After his death, the mortgagee assigned to A. the principal and interest due to him and his security for them under the deed of surrender. *Held*, that the covenant in the mortgage of the original lease was not extinguished by the surrender, and that the assignee was a specialty creditor of the mortgagor in respect of it. *Greenwood v. Taylor*, 14 Sim. 505.

4. *Re-conveyance*.—After action brought by mortgagee (a solicitor) against mortgagor for his bill of costs on effecting the mortgage, and 35*l.* taken out of court in that action by mortgagee in satisfaction of the demand, and after second action brought between the parties to recover the mortgage money, and costs in that action, taxed at 19*l.* 16*s.* 4*d.*, mortgagor tendered to mortgagee the said sum of 19*l.* 16*s.* 4*d.*, and 10*s.* for any other costs and

expences that might be due. Mortgagee, however, refused to re-convey because the bill of costs, the subject of the first action, had not been satisfied, and the taxed costs of the second action were only costs as between party and party. Upon a bill filed by mortgagor against mortgagee to compel a re-conveyance: *Held*, that the mortgagee must pay the costs of the suit.

Under the circumstances of the case a tender of mortgage money held to be absolute, and not conditional.

*Semble*, that the judge at chambers will not order a re-conveyance of mortgaged premises. *Morley v. Bridges*, 2 Coll. 621.

5. *False recital of prior incumbrance.—Equitable mortgage.*—*P.* being indebted to *B.* makes a mortgage of an equity of redemption of real estate to *B.* for the purpose of securing the debt, and by the indenture of mortgage, it was falsely recited that the mortgaged estate was subject to an equitable charge for monies due to *I.* secured by the deposit of deed. *P.* retained the deed in his own possession, and subsequently deposited it with *I.* as a security for money partly lent to *P.* by *I.* before and partly after, the mortgage of the estate to *B.* *I.*, at the time of the deposit, had no notice of the prior mortgage to *B.* *Held*, that inasmuch as an actual prior charge on the estate, if afterwards paid off by *P.* or otherwise avoided, would have left *B.* in the position of the first mortgagee of the equity of redemption, the recital of a charge which had, in fact, no existence, could not have the effect of postponing *B.*

That the instrument acquired by *I.* by the subsequent mortgage by way of deposit could not be enlarged by the effect of the false recital, and was only an interest in the equity of redemption, subject to the mortgage to *B.*; and that *B.* in a suit for that purpose was entitled as against *I.* to the ordinary decree for payment or for foreclosure, and the delivery up of the deed on default. *Frazer v. Jones*, 5 Hare, 475.

See *Foreclosure*.

#### PARTITION.

Commissioners of partition have no power to award sums to be paid for owelty of partition. *Mole v. Mansfield*, 15 Sim. 41.

#### PARTNERSHIP.

1. *Executor.—Lien.—Order and disposition.*—*A.* authorized the sale of his share in a brewery to *B.*, his surviving partner, whom he appointed one of his executors. *B.* conceiving he had duly become the purchaser, carried on the business till his death, and it was subsequently carried on by *C.*, his executor. Afterwards, upon a bill being filed, the sale was set aside, and the estate of *A.* became entitled to a share in the profits made subsequent to *A.*'s death. *C.* afterwards became bankrupt, having the whole trade property in his possession. *Held*, first, that the trade creditors during the time the business was carried on by *C.* had no lien for their debts on *A.*'s share; and second-

ly, that the property was not within the order and disposition of the bankrupt. *Stocken v. Dawson*, 9 Beav. 239.

2. *Covenants.*—Premises were demised to *A.* and *B.*, who were co-partners, upon which they carried on their partnership business. *A.* died during the lease, and after his death his executors carried on the business in co-partnership with *B.* on the premises.

*Held*, nevertheless, that the covenants in the lease, which were joint only, were not to be considered as several as well as joint, so as to make *A.*'s estate liable for breaches of the covenants which occurred after his death. *Clarke v. Bickers*, 14 Sim. 639.

Case cited in the judgment: *Sumner v. Powell*, 2 Mer. 30; *Turn. & Russ.* 423.

3. *Agreement.*—An agreement between *B.* and *C.* was communicated by one of the parties to *A.*, after applications in writing from *A.* for the signature of the other parties to a memorandum expressing his interest as a partner in the transaction relating to the land, the subject of the agreement, and the court held, that the agreement so communicated must be taken, not as an original proposal, but as an acknowledgment of a pre-existing right in *A.*; and that *A.* might avail himself of the acknowledgment, notwithstanding the agreement between *B.* and *C.*, was *res inter alios acta*, and notwithstanding *A.* objected to some of the terms in that agreement, as not truly expressing his partnership contract. *Dale v. Hamilton*, 5 Hare, 392.

Case cited in the judgment: *Garrard v. Lord Lauderdale*, 3 Sim. 1.

#### PRINCIPAL AND AGENT.

*Factor—Account.*—Fraudulent accounts between principal and factor opened from the beginning, the court holding that the relief ought not under such circumstances to be limited to a right to a surcharge and falsify.

Amongst the most important duties of a factor are those which require him to allow his principal the free and unbiassed use of his own discretion and judgment, to keep and render just and true accounts, and to keep the property of his principal unmixed with his own or the property of others. A factor having violated all these and other duties, *held*, that no credit was due to his accounts, and that the principal was not bound by them. *A. B.*, being in embarrassed circumstances, conveyed property to trustees, to sell and pay his creditors (parties thereto) in proportion. *A. B.* afterwards instituted a suit against one of such creditors, for the purpose of taking the accounts of such creditors and to cut down the estimated amount of his debt. The other creditors were served by copy of bill. *Held*, that as the other creditors were bound by the proceedings, the suit was not imperfect for want of parties, and a decree was made without prejudice to the right of the other creditors, to any sum which the plaintiff might recover on taking the accounts. *Clarke v. Tipping*, 9 Beav. 284.

## PRIORITY OF INCUMBRANCES.

See *Joint Stock Company : Mortgage*, 5.

## RECEIVER.

See *Trustee*, 3.

## REVERSION.

See *Married Woman*, 2, 3.

## SHIP.

See *Mortgage*, 1.

## SPECIFIC PERFORMANCE.

*Indemnity. — Executor of Vendor.*—*A., B., and C.*, possessed of a manor under an ecclesiastical lease, agreed with *M.* to grant him upon the expiration of a subsisting grant, a copy of court-roll of a tenement holden of the manor, and entered into a joint and several bond to perform the contract. *A.* afterwards conveyed his interest in the manor to *B.*, subject to the agreement with *M.*, and died, having appointed the plaintiff his executor. The validity of the lease constituting the title of *B. and C.* to the manor, was subsequently impeached, and pending the trial of their right to the manor, they were unable to grant a copy of court-roll according to the agreement. *M.* thereupon brought three several actions upon the bond against the plaintiffs *B. and C.* respectively. The plaintiffs *B. and C.* entered into a consolidation rule, whereby they consented to be bound by the verdict in one of the actions. The plaintiff then filed his bill against *B., C., and M.*, for a specific performance of the contract by *B. and C.*, and to restrain the action brought by *M.* Held, that the question as against *M.* was the same both at law and in equity, and that after having consented to be bound by the verdict in the action, the plaintiff could not sustain the suit, and the bill was dismissed without prejudice to any question of contribution or indemnity, as between the plaintiff *B. and C.*, the obligors on bond. *Hull v. Pearce*, 5 Hare, 408.

## TRUSTEE.

1. *Liability for reserving insufficient rent. — Fraud. — Neglect of duty.*—A bill founded on an imputation of fraud and personal corruption will not warrant an inquiry on that case being disproved, whether there has not been neglect or an omission of duty.

A trustee letting a farm originally at a proper rent will not be held personally liable for the difference between that rent and the rent which at a subsequent period of the tenancy might have been obtained, merely because he neglected to give notice to quit a few months after there appeared a probability that the price of agricultural produce would enable him with propriety, as between landlord and tenant, to obtain a higher rent.

And *semble*, that rule would be applicable even to a case in which the tenant was a near relation of the trustee, unless there were some other circumstances to confirm the suspicion of personal favour, which that relationship is calculated to excite. *Ferraby v. Hobson*, 2 Phill. 255.

2. *Breach. — Duty of cestuis que trust.*—When one of several cestuis que trust institutes a suit for relief in respect of a breach of trust, he is bound in the conduct of the suit to take care of the interests of the others as well as of his own. *Williams v. Powell*, 2 Phill. 329.

3. *Receiver. — Husband and wife.*—A husband contracted for the lease of some premises, and he afterwards induced the trustees of his marriage settlement, who held monies for the separate use of his wife, without power of anticipation, to act in breach of their trust, and to purchase the property. The property was conveyed to the trustees, and by a deed executed by the husband and wife, it was declared that it should be held for their indemnity and on the trusts of the settlement. The husband laid out very considerable sums of money in building and repairs, and with consent of the wife, was permitted to receive the rents. After some years disputes arose; the trustees insisted on receiving the rents, and proceeded at law to enforce their rights; whereupon the husband filed a bill against the trustees and his wife, claiming a lease under the agreement, and asking for a sale of the property, and for the application of the produce, first in replacement of the trust funds, and afterwards in reimbursing the plaintiff his outlay. A motion for a receiver was refused, with costs. *Wiles v. Cooper*, 9 Beav. 294.

4. *Power to appoint new.*—The court, in decreeing the appointment of new trustees, will not direct a power to be inserted in the deed for appointing new trustees *toties quoties*. *Bowles v. Weeks*, 14 Sim. 591.

5. *Chose in action. — Order and disposition. — Notice.*—A trustee, for sale of testator's estates, sold part of them, and paid the proceeds into court. A party entitled to a share of the testator's property assigned his interest to *S.* by way of mortgage, and *S.* gave notice of the assignment to the trustee, but did not obtain a stop order. The remainder of the estates was afterwards sold, and the proceeds paid into court under the decree in the suit. Subsequently the assignor took the benefit of the Insolvent Debtors' Act. Held, that the notice given to the trustee was sufficient to take the assigned share out of the order and disposition of the assignor. *Matthews v. Gabb*, 15 Sim. 51.

6. *Voluntary transfer of stock. — Parent and child.*—*A.* directed his agents to invest part of his balance in their hands in the purchase of 4000*l.* stock in the names of himself and his wife in trust for his infant son. The agents made the purchase in the joint names, but without any trust expressed, because, as they afterwards informed *A.*, the bank objected to trust accounts appearing on their books. *A.* allowed the stock to remain without any trust being declared, and received the dividends of it down to his decease. Held, that neither his son nor his wife (who survived him) were entitled to the stock, but that it formed part of his assets. *Smith v. Warde*, 15 Sim. 56.

## VENDOR AND PURCHASER.

1. *Title.—Surrendered lease*—Upon the sale of a leasehold for lives, expressed to have been granted by a corporation in consideration of the surrender of a prior lease, the title to the surrendered lease must be shown. *Hodgkinson v. Cooper*, 9 Beav. 304.

2. *Purchase money*.—A lessee assigned the demised premises to *A.* by way of mortgage, and afterwards made two equitable mortgages of them, one to *B.*, and the other to *C.*, and died. *C.* agreed to purchase the lease of his executors free from incumbrances, and afterwards took possession of the premises, but did not pay the purchase money. *Held*, that as between *C.* and the executors the purchase money must be considered to have been applied, on the day on which *C.* took possession, towards satisfaction of the incumbrances, according to their priorities. *Greenwood v. Taylor*, 14 Sim. 506.

3. *Reference of title.—Laches*.—Motion by a vendor for a reference as to title refused, because he had been guilty of laches in prosecuting his suit. *Dorin v. Harvey*, 15 Sim. 49.

## VOLUNTARY DEED.

1. The executors of a person who had entered into a covenant for further assurance in a voluntary settlement, having refused to perform it, the court, in a suit instituted by a third party for the administration of the covenantor's estate, would not permit the covenantor to prove as a creditor under the decree in the administration suit, but gave him leave to bring such action as he might be advised. *Hervey v. Audland*, 14 Sim. 531.

2. *A.* made a voluntary assignment of turnpike bonds, and shares in companies to *B.* in trust for himself for life, and after his death for his nephew. He delivered the bonds and shares to *B.*, but did not observe the formalities required by the Turnpike Road Act, and the deeds by which the companies were formed, to make the assignment effectual.

*Held*, on his death, that no interest in either the bonds or the shares passed by the assignment, and that *B.* ought to deliver them to his executors. *Searle v. Law*, 15 Sim. 95.

## BUSINESS OF THE COURTS.

## COMMON LAW SITTINGS.

## Queen's Bench

*In and after Hilary Term, 1848.*

## MIDDLESEX.

*In Term.*

1st Sitting, Wednesday . . . . . Jan. 12  
And two following days at Eleven o'clock.

2nd Sitting, Saturday . . . . . Jan. 15  
And subsequent days at Eleven o'clock.

3rd Sitting, Friday . . . . . Jan. 28  
At  $\frac{1}{2}$  past Nine o'clock precisely, for Undefended Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sitting after Term, Tuesday, Feb. 1, at half-past 9 o'clock.

## LONDON.

*In Term.*

Sitting at 10 o'clock, Saturday Jan. 29.

For Undefended Causes and such as the Judge considers fit to be taken.

*After Term.*

Wednesday . . . . . Feb. 2  
(To adjourn.)

## Common Pleas.

*In and after Hilary Term, 1848.*

*In Term.*

## MIDDLESEX.

Saturday . . . Jan. 15 | Wednesday . . Jan. 19  
Friday . . . . . 21 | Wednesday . . . . 26

*After Term.*

## MIDDLESEX.

## LONDON.

Tuesday . . Feb. 1 | Wednesday . . Feb. 2

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday the 2nd Feb., in London, no causes will be tried, but the court will adjourn to a future day.

## Exchequer of Pleas.

*Hilary Term, 1848.*

*In Term.*

## IN MIDDLESEX.

1st Sitting, Wednesday . . . . . Jan. 12  
2nd Sitting, Wednesday . . . . . 19  
3rd Sitting, Tuesday . . . . . 25

## IN LONDON.

1st Sitting, Tuesday . . . . . Jan. 18  
2nd Sitting, Monday . . . . . 24

*After Term.*

## IN MIDDLESEX.

## IN LONDON.

Tuesday . . . Feb. 1 | Wednesday . . Feb. 2  
(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 8, 1848.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

### THE ECCLESIASTICAL COURTS DOCTORS' COMMONS.

THE incidental circumstances disclosed in the case of *Geils v. Geils*, in the Arches Court, some particulars of which were mentioned in a recent number, have, as might have been expected, furnished matter for observation in general, as well as professional, circles. It turned out that the promotent (Mr. Geils) is a distant family connection of Sir Herbert Jenner Fust, the learned judge who is to determine the cause; that the leading counsel of the promotent is the son, and his proctors the son and son-in-law of the learned judge; and that another son of the learned judge is on such friendly terms with the promotent, as to have been a guest at his country residence during the pendency of the suit.

We believe all who are acquainted with these facts will concur with Dr. Addams, (the counsel for Mrs. Geils,) when he characterised it as "an unfortunate state of things." It will be universally and unreservedly conceded, we are certain, that Sir Herbert Jenner Fust is as incapable as any judge of the Courts of Equity or of the Common Law Courts, of having his judicial decisions improperly influenced or biassed; but no judge of any court should be placed in such a position as that in which he now stands, where his judicial determination is liable, however erroneously, to be ascribed to the dread of public opinion on the one hand,

or the insensible influence of private feeling on the other. The learned judge himself seems to feel that the constitution of the court has produced the difficulty. If this be so, it goes far to demonstrate, that the constitution of the court should be essentially altered. The learned judge says apologetically:—"In the judicial committee, or the courts of law, one judge may withdraw; but could I refuse to accept the letters of request in this case, or decline to sit and hear the cause?"

It certainly cannot be supposed that the learned judge could refuse to receive letters of request addressed to him as the judge of the Arches Court, but it might be imagined that if a relative of the learned judge—suppose it had been a son or a brother—instituted a suit in that court, the learned judge would not have been compelled to hear and decide it. An eminent judge (Dr. Lushington) presides in the Consistory Court, and we should have conceived that he, or some other learned gentleman of established reputation in this branch of jurisprudence, might, in such an emergency, be induced to act as a substitute, and relieve the learned judge of the Arches Court from a difficulty with which he could not fail to feel oppressed. As already hinted, however, the distant family connexion between the learned judge and Mr. Geils appears to be of far less importance than the professional relationship between the promotent and the sons of the judge. Every one acquainted practically with forensic business has remarked, how readily the advocate's or the solicitor's feelings and expectations are embarked in the case of the client. Indeed, the client cannot be said to be properly or

adequately represented, unless his views, feelings, and wishes are perfectly reflected in the minds of his professional advisers. Legal biography abounds with instances, in which the ablest and most acute understandings have yielded to the influence of this peculiar relationship. It is quite impossible to suppose that in the case of *Geils v. Geils* the feelings of the advocate and proctors of the promotent were not enlisted in the cause of their client, and that they have not been and are not warmly and anxiously interested in having the horrible charges brought against him refuted. Their zeal and anxiety would probably be little increased, but it could not be diminished, by the accidental circumstance that some members of their own family had lately been, no doubt, hospitably received at the table of their client. Under such circumstances, is it too much to suppose that, in the unrestrained intercourse of domestic life, the advocate or the proctor might not uniformly keep so vigilant a guard over their feelings and words as to conceal their impressions and wishes in respect of a case one so nearly allied to them was judicially called upon to determine? It may be asked, how such a state of things could, if foreseen, be prevented? Whilst Dr. Jenner practises as an advocate, and his brother as a proctor in the Arches Court, how could they, without violating professional rules, refuse to accept a retainer from any suitor to the court? Our answer is, that we can perceive no necessity for those gentlemen practising at all in the court in which their father is the sole judge. We have heard of instances in which individuals filling judicial situations interdicted their sons from practising in the courts in which they presided as judges.\* It is obviously desirable, upon various grounds, that such a rule should be authoritatively established in regard to all courts of justice. Discarding from consideration the insensible influence which the arguments and representations of those to whom they are tenderly attached have over the most powerful intellects, there is a certain degree of unfairness towards other professional men in the son or the son-in-law of a judge practising before him. The

practitioner who stands in such a relation to the head of the court is not on an equal footing with professional competitors. Taking into account the competition existing in every branch of the legal profession, it is not wonderful if those not engaged in it suppose, that a father will not be disposed to think the worse of those who entrust their interests to his son! We can easily imagine a man of lofty and delicate feeling disdaining to accept even an imaginary advantage by such means; but we understand that in the Arches Court the state of circumstances which has excited so much astonishment, is not new; and that in the time of Sir Herbert Jenner Fust's relative and predecessor, Sir John Nicholl, a somewhat similar state of circumstances existed in the court over which that learned civilian presided. In short, to use a homely, but familiar phrase, it is said this court has always been a "family concern." It is not to be wondered at, therefore, if the present possessors consider the honours and emoluments matter of inheritance. The objection to this patriarchal mode of administering justice, however, is, that the suitors do not always belong to the same family, and may be excused for desiring that justice should be administered after a different fashion.

A far graver and more important question remains to be discussed. Is the public or private benefit arising from the institution of suits resembling that of *Geils v. Geils* so obvious, that the system of procedure established in the Ecclesiastical Courts should be maintained? Our readers are already informed of the nature of the suit. Not only the immediate parties, but a multitude of other persons, who happen to be connected in some degree with one or other of those parties, are subjected to humiliating and revolting imputations. An inquisitorial investigation of the most searching character is gone into, with respect to their habits, tastes, domestic relations, and most secret acts. The worn-out scandal is resuscitated, the error atoned for and forgotten blazoned forth again, and the happiness of third parties thus sacrificed in a suit the determination of which may be a matter of total indifference to them. Let those who have read the newspaper report of *Geils v. Geils* say, into how many homes and households that case must have brought shame and misery! But how are the immediate parties benefited by the proceedings which have produced so much injury to others? The suit is not yet decided, but it must be decided in one of two

\* The late lamented Sir Michael O'Loghlen, the Master of the Rolls in Ireland, publicly notified, that he deemed it inconvenient and unbecoming that his son should practise in the court in which he presided; and in deference to the opinion thus expressed, Mr. (now Sir) Colman O'Loghlen never held a brief in the Rolls Court during his father's life.



ways. The judge may consider the charges alleged against Mr. Geils have not been established, and he will then be bound to decree that Mrs. Geils should return to cohabitation with her husband; or he may consider some one of the alleged charges against the husband sufficiently supported, and therefore decree that Mrs. Geils is entitled to a divorce *a mensâ et thoro*. Assuming the decision of the court to be favourable to the husband, what does he gain? Can it be supposed that the judge, the husband, the wife, or any other person, can really desire, after all that has taken place in this suit, that Mrs. Geils should return to her husband's house and bed? She either believed or fabricated the revolting charges, the suit in the Arches Court exposed to the world. In either case it is impossible that the parties could ever meet each other with composure, far less renew their conjugal intercourse.

It is not from the decree of the Ecclesiastical Court, therefore, that Mr. Geils derives any direct benefit. Assuming, on the other hand, that the decree is in favour of the wife, how is she benefited? She can no longer be compelled to live with a man whose earnest desire it probably is never to see her, or hear her name again. She obtains from the judgment of the Arches Court a legal right of separation, but Mr. Geils is still her husband and the father of her children. His right to the custody of his children, if questioned, must be tried and decided upon by a different tribunal, and if Mrs. Geils desires to be at liberty to enter again into the matrimonial state during the life of her present husband, the decree of the Arches Court confers no such privilege on her. As regards the immediate parties to the suit, therefore, no injury is redressed, no grievance really remedied, and no wrong punished, by any determination the court can come to; and as to third parties, we have seen how cruelly and unfairly they may be injured. We doubt if any one now-a-days supposes the public morals are benefited, or virtue is promoted, by a course of proceeding such as we have pointed out. To us it seems as useless as it is mischievous, and we should rejoice to see the select but learned body practising in the courts at Doctors' Commons, relieved from the unenviable duty of investigating and analysing the details of scandal and impurity; and at the same time, a glaring defect in our system of jurisprudence, remedied.

## NOTES ON EQUITY.<sup>1</sup>

### FORECLOSURE OF MORTGAGE.

AN important point, on which there was considerable conflict of authority, was decided by the Master of the Rolls, in a recent case<sup>b</sup> relating to the claim of a mortgagee who sold the mortgaged estate at a fair price, but for less than the amount due to him. It was held, that he could not, after foreclosure *and sale*, recover the remaining amount from the mortgagor on his collateral personal securities. He may foreclose first, and *while the estate remains in his power* sue on the bond or covenant, but then he opens the foreclosure, and the mortgagor may redeem.

The facts of the case, as we have abridged them from the report, were these:—

In 1828, a person of the name of Smith conveyed an estate to John Ingram Lockhart, by way of mortgage, to secure the repayment of the sum of 2,999*l.* lent, and afterwards in the same year executed a deed, whereby a further charge on the same estate of 500*l.* in favour of Lockhart was created. Lockhart being entitled to this mortgage, borrowed, in 1831, of William Browne, since deceased, the sum of 1,600*l.*; and assigned the mortgaged debts of 2,999*l.* and 500*l.* to Browne, on trusts *inter alia* to pay costs, to satisfy the 1,600*l.*, and interest, and to pay the surplus to Lockhart. The payment was further secured by a covenant and bond. In 1831, Browne died, and in 1835 Lockhart died. In 1841, a bill to foreclose the mortgage was filed by the personal representatives of Browne, and the usual decree for accounts and foreclosure was made.

In 1842, the Master reported, that on the mortgage to Lockhart there was due from Smith 5,436*l.* 0*s.* 3*d.*, and on that from Lockhart to Browne the sum of 2,401*l.* 18*s.* 7*d.* A day was appointed for payment, and default having been made, the mortgaged estate was foreclosed as against Smith, and also, default having been made, after a day had been appointed for payment of the sum due to the estate of Browne from the personal representative of Lockhart, the mortgage was foreclosed as against him.

The representatives of Browne being in possession of the mortgaged estate, sold it absolutely for 1,999*l.*, and it was admitted that it had been fairly sold. A decree was afterwards made for the administration of Lockhart's estate. The representatives of Browne went in under the decree, and claimed to be allowed to prove on the bond, for the residue of the mortgage debt after deducting the purchase money, as a debt on the covenant or bond. The Master having allowed their claim to the amount of 642*l.* 8*s.* 11*d.*, Lockhart's representative took exceptions to the report, on the ground

<sup>b</sup> *Lockhart v. Hardy*, 9 Beav. 349.

that nothing ought to have been found due to Browne.

Mr. Kindersley and Mr. Lloyd supported the exceptions, and Mr. Lowndes appeared for other parties in the same interest; and Mr. Turner and Mr. Shapter appeared for the representatives of Browne. The authorities cited, so far as they appeared to be important, are noticed in the judgment.

The Master of the Rolls, after taking time to consider the cases, said,

That if a debt is secured by the mortgage of a real estate, and also by covenant and by bond, the mortgagee may pursue all his remedies at the same time. If he obtain full payment on the bond or covenant, the mortgagor is, by the fact of payment, entitled to redeem the estate, and foreclosure is prevented or not allowed. But if the mortgagee obtain only part payment on the bond or covenant, he may go on with his foreclosure suit, and giving credit, in account, for that which he has recovered on the bond or covenant, he may foreclose for non-payment of the remainder. On the other hand, if he obtain foreclosure first, and allege that the value of the estate is not sufficient to satisfy the debt, he is not absolutely precluded from suing on the bond or covenant. But it is held, that by doing so, he gives to the mortgagor a renewed right to redeem, or, in other words, opens the foreclosure; and consequently, upon the commencement of an action against him on the bond after foreclosure, the mortgagor may file a bill for redemption, and upon payment of the whole debt secured by the bond, he is entitled to have the estate back again, and the securities given up, and I conceive that after foreclosure, the court will not restrain the mortgagee from suing on the bond, provided he retain the mortgaged estate in his own power, ready to be redeemed, in case the mortgagor should think fit to avail himself of the opening of the foreclosure. The question now is, whether such an action can be sustained, after the mortgagee has sold the estate, and deprived himself of the power of restoring it to the mortgagor on payment of the whole debt. It does not seem unreasonable, when the difference between the whole debt and the price of the estates, fairly sold, is all that is sought to be recovered in the action.

His Lordship observed, that the rule of the court in regard to opening a Foreclosure was founded on this :

The mortgagor, if he does not pay the whole debt, may lose the whole estate, however valuable ; but that if he does pay the whole debt, he is entitled to have the estate restored to him, and it seems to follow, that the mortgagee, having got the estate, is not to proceed against the mortgagor for full payment, if he cannot restore the estate. If this be so whilst the estate remain in his hands, how can it be altered by any separate dealing of his own with the estate, without the consent of, or any agreement with,

the mortgagor? The mortgagee had, by his securities, a right to foreclose the mortgage, and if he thought the estate insufficient, a further right to proceed on his personal securities, thereby giving to the mortgagor a renewed right to redeem; but when he has so dealt with the estate, that the mortgagor cannot redeem, it appears to me that he is not entitled to proceed, and that this court would restrain him from proceeding on the personal securities. I think, therefore, that the exceptions to the Master's report must be allowed. It must be owned that the case of *Tooke v. Hartley*,<sup>c</sup> and the case of *Perry v. Barker*,<sup>d</sup> have left this matter in great obscurity, and I find it difficult to understand the various opinions stated. I proceed upon this, that, in equity, the mortgagee is bound to restore the estate on full payment of the debt; and that having sold the estate, and thereby disabled himself from restoring it, he is not in a condition to demand payment of the whole debt, which he does, when he sues on the bond. If sued on the covenant, he might lay his damages at the difference between the debt and price of the estate sold. This would be obtaining full payment of the debt, taking the value of the estate as part. I incline to think that it would be altering the nature of the contract between the parties, and giving to the mortgagee the benefit of a trust for sale with a bond or covenant. It might be reasonable to do this, and desirable to have it done, but it does not appear to me that such is the law at present.

[The learned reporter refers to *Schoole v. Sale*, 1 Sch. and Lef. 176; *Stokoe v. Robson*, 3 Ves. and B. 51; *Smith v. Bicknell*, ib. n.; *Shelmardine v. Harrup*, 6 Mad. 39; *Bentlnck v. Willink*, 2 Hare, 1.]

## PRACTICE OF RETAINERS.

### EXCLUSIVE RIGHT OF THE CROWN TO RETAIN QUEEN'S COUNSEL.

A PETITION was presented to the House of Commons on the 17th of the last month, by Major Blackall, M.P. for Longford, on the part of Mr. Geo. G. Hay, the attorney for the plaintiff in the case of *Buron v. The Hon. Capt. Denman*, on a question of much importance to the profession at large, involving as it does the subject of professional confidence, besides being a matter of grave constitutional importance.

The daily journals have not bestowed any notice on this petition, nor upon the conversation that arose on the 20th instant, when Major Blackall moved that the petition be printed for circulation with the votes. On the latter of the days mentioned, Major Black-

<sup>c</sup> 2 Bro. C. C. 125; 2 Dick. 785.

<sup>d</sup> 8 Ves. 527.

all drew the attention of the House and her Majesty's government "to the facts stated in the petition as they contained allegations which, if sustained, were in his mind calculated to destroy confidence both between and in professional men." He then briefly went through the statements contained in the petition. And he concluded by observing, that "these matters were of so serious a nature that he trusted there would be no objection to the petition being printed." The chairman of the committee for examining petitions said, that as the petition had been already ordered to be printed, he presumed Major Blackall's object to be attained. Sir George Grey suggested that such being the case, Major Blackall should withdraw the motion. Major Blackall then said, that his object being to have the petition printed, and to draw the attention of the government to the subject, he had no objection to withdraw the motion.

The following are the statements in the petition.

"That the petitioner is the attorney retained by Senor Don Tomas Rodriguez Buron, by Senor Don Domingo Fernandez Martinez, and by Senor Don Angel Jimenez respectively, merchants of Havanna, in the island of Cuba, in three several actions brought by these parties respectively, and now pending in her Majesty's Court of Exchequer of Pleas at Westminster, against the Honourable Captain Joseph Denman, of her Majesty's navy, and to one of which actions, viz. that of *Buron v. Denman*, the attention of the House has been very recently directed.

"That these actions were commenced on the 3rd day of August, 1842, and in the month of November, 1842, the petitioner retained the services of Mr., now Sir Fitzroy Kelly, Knight, as counsel for the plaintiff in these three several actions. And that from the period aforesaid up to the month of May last, (with the exception of the short interval during which Sir Fitzroy Kelly held the office of her Majesty's Solicitor General,) the petitioner acted under the advice of Sir Fitzroy Kelly as such counsel in all the stages of these actions at law.

"That by means of having advised the petitioner on the affairs of his clients, Sir Fitzroy Kelly has become most intimately acquainted with the case of the petitioner's clients, 'Buron,' 'Martinez,' and 'Jimenez.'

"That in the month of October last it was intimated to the petitioner that Sir Fitzroy Kelly, although still holding the retainers of the petitioner on behalf of his clients, could no longer act as their counsel, in consequence of the Attorney-General having required his services as counsel for the defendant, Captain Denman.

"That the petitioner, immediately on his

receiving this intimation, wrote to Sir Fitzroy Kelly, reminding him of his having been for so long a period retained by the petitioner as counsel for his clients, and of his having so repeatedly advised on their case; but he received back for answer from Sir Fitzroy Kelly, that he had 'no choice in the matter to which the petitioner's letter referred; that the crown had required his services, and that he was bound by his oath of office to obey.'

"That the petitioner then addressed a letter to the solicitor to the Admiralty, who is and has been from the commencement of these actions conducting the defence of Captain Denman, and from him he received for reply, that 'having received the directions of the Attorney-General to retain Sir Fitzroy Kelly, he had not any discretion upon the subject;' that he had 'explained to the Attorney-General that Sir Fitzroy Kelly was the leading counsel and adviser of the plaintiffs, and that on the hearing of the demurrer, (in the course of the pleadings,) Sir Fitzroy had actually appeared in court, and argued for them.'

"That the petitioner, impressed with the great importance it was to his clients that Sir Fitzroy Kelly should continue their counsel, and impressed also with a sense of the great hardship that his clients were made to sustain by being deprived of their leading advocate, memorialised the Lords of the Admiralty, who are defending the actions through their solicitor, but their lordships have refused to forego the services of Sir Fitzroy Kelly.

"That the petitioner respectfully begs to call the attention of the House to the fact, that neither the crown nor the department of the Admiralty are parties to these actions, and that the actions (as appears by the titles of them) were instituted, and have been always conducted against Captain Denman individually. And the petitioner therefore humbly submitted that the interference of the Lords of the Admiralty is gratuitous and uncalled for.

"That the petitioner respectfully submitted to the consideration of the House the hardship and injustice which his clients are made to suffer by the conduct of the Lords of the Admiralty, and of the chief law officer of the crown, and which not only strikes at the root of the independence of the bar, but is calculated to destroy all professional confidence, whilst it is a flagrant act of tyranny inflicted on the petitioner's clients."

Where proceedings are conducted in the Queen's name, and the defendant requires the aid of a queen's counsel, it is the ordinary practice to apply for a license, and we never heard of an instance in which it was refused. Here no license is necessary, because her Majesty is no party to the proceedings; but inasmuch as Captain Denman was merely acting, as he conscientiously believed, in the discharge of his duty as a British officer, the Lords of the Admiralty very properly take upon them the burthen

of the defence. But this ought not to prejudice the right of the plaintiffs to have the services continued of the counsel who had accepted their retainer,—to whom they had confided their case in all its points of strength or weakness. An attorney-at-law would not only not be permitted to act against a former client, but if he ventured to do so, would be struck off the roll for his *ambi-dexterity*. Is that rule of morals right which binds the attorney and lets loose the barrister?

## LAW OF LANDLORD AND TENANT.

MARYLEBONE COUNTY COURT.

(Before Andrew Amos, Esq.)

*Reynolds v. Lucking*, 16 & 18 Oct. 1847.

RENT NOT RECOVERABLE WHERE NUISANCE ALLOWED TO EXIST.

THIS was an action to recover 12*l.* 10*s.*, the amount of one quarter's rent alleged to be due at Midsummer last for a dwelling-house at Notting Hill, of which the defendant had been the tenant; the particulars claimed the amount to be due for *rent* of the premises. *Messrs. Roy & Co.* appeared for the plaintiff, *Mr. W. B. Cooper* for the defendant.

*Cooper* took a preliminary objection to the form of action, arguing that unless the plaintiff was prepared to prove a *written contract* no action for rent could be maintained, and the plaintiff must be nonsuited; the action should have been for use and occupation; he, however, wished the case to be argued upon the merits, and if the plaintiff would state whether he proceeded for the *rent* of the premises or for its *use and occupation*, he would not press the objection, but allow the case to proceed.

*His Honour* having directed the plaintiff to make his election, the plaintiff's attorney said he proceeded for the *use and occupation*.

For the plaintiff, who is a builder, it was proved by his clerk, and elicited on cross-examination, that defendant entered into possession on the 20th of March last, under a *parol* agreement, at the rent of 50*l.* per annum, but that after he had occupied the house for about a week, he quitted without notice, and on the 31st of the same month he called on the plaintiff with the key, complaining that the place was so infested by *fleas* he could not reside in it; that plaintiff refused to accept the key. The witness admitted he had, with the plaintiff's authority, repeatedly entered the house to see if the fixtures were safe. In this state of circumstances, the plaintiff, after one quarter's rent had become due at Midsummer, brought his action, as before stated, urging that the defendant was not justified in thus quitting the premises, and that he was still liable for the past and accruing rent. Upon this evidence

*Cooper* submitted that the entry of the plain-

tiff by his clerk, with the plaintiff's authority, amounted in law to an *eviction*, and that the plaintiff ought to be nonsuited.

*His Honour* overruled the objection.

*Cooper* then entered upon the defence on the merits, and contended, that this being an action for use and occupation, as now admitted by the plaintiff, such being brought under the statute 11 Geo. 2, c. 19, s. 14, it was a proceeding of an *equitable* nature to recover *reasonable satisfaction* for the use by the defendant of the premises of the plaintiff; and that it was therefore competent for the defendant to show that he had no *beneficial occupation* by reason of the existence of a nuisance which the landlord was bound to remove, and which existed at the time of the entry by the defendant, and with the landlord's knowledge; that the house being infested and so overrun with *fleas* as to render the place unfit for habitation; this amounted to such a nuisance as would bar the plaintiff's right of recovering. *Smith v. Murrable*, 1 C. & Marsh, 479; *Cowie v. Goodwin*, 9 C. & P. 378.

The evidence of the defendant in support of this view of the case proved that he and his wife were unable to remain in their bed at night from the existence and annoyance of fleas. That they had destroyed from 20 to 30 on their persons on going to bed; and that, beyond this, they appeared in great numbers throughout the house, and even presented themselves at the dinner-table in the day time. Defendant also proved that he and his wife were so bitten by these penetrating and diminutive destroyers of rest at night as to render them unable to attend to their duties in the day-time.

*Roy and Co.*, in reply, insisted that the only contract the law implied was a contract for *quiet enjoyment*, and not for beneficial occupation—that *Smith v. Murrable* had been overruled by *Hart v. Windsor*, 12 Mee. & W. 68, which clearly laid down the principle that there is no implied warranty attached by law to a *demise* of land or premises, that they are fit for any particular purpose.

*Cooper* observed upon this case and argued, that *Hart v. Windsor* was distinguishable from the present case, inasmuch as there the defendant held under a *written contract*, and must be presumed, at the time of entering into such contract, to have had full knowledge of every circumstance, and might by stipulation in the contract, or at least he had it in his power to do so, provide against being compelled to continue in possession, or remain liable for the rent of a house infested like the present; whilst the present defendant had no such advantage, the contract, or rather *letting*, being simply by *parol*; and he was therefore remitted back and protected by the general principle of law, viz., that he so became the tenant of this property under an implied warranty that the house was *habitable*, free from the nuisance complained of; and he was therefore entitled to have a *beneficial occupation*.

*His Honour* said, he at first considered the

case cited for the plaintiff as conclusive against the defendant, but he had paid attention and was struck with the distinction between the cases taken by Mr. Cooper. He wished to have all the cases handed to him, which he should read, and would give his judgment on Monday.

*His Honour*, on this day (18th), addressing Mr. Cooper, said, he had considered this case, and read the reports of the several cases cited, and he had, after mature consideration, come to the conclusion that the distinction taken by Mr. Cooper between the case of *Hart v. Windsor* and the present was correct. He should therefore give

Judgment for the defendant.

This is an important case of *Landlord and Tenant*, illustrating the duty of a landlord to remove a nuisance or forfeit his remedy against the tenant for rent; and also as distinguishing the wide difference between the law in cases where the tenant holds by *written contract* or by *parol*. The statute 11 Geo. 2, c. 10, s. 14, cited above, is expressed to have been passed in order to obviate difficulties that occurred in recovery of rent where the demises were *not by deed*, and enacts, that where the agreement is not by deed the landlord shall "recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendants in an action on the case for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any *parol* demise or any agreement (not being by deed) wherein a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered."

As a general rule, use and occupation lies not only for the enjoyment of corporeal, but also of incorporeal hereditaments, although the letting be by *parol*; (*Bird v. Higginson*, 4 N. & M. 515;) but there must be an occupation by the defendant; actual or personal occupation is not required, a *constructive* occupation being sufficient. (*Bull v. Sibbs*, 8 T. R. 327.) The action is founded upon the relation of landlord and tenant, either express or implied, and unless such a relationship can be implied, it will not lie; it will not lie to try the title to law, and where the landlord has treated the tenant as a trespasser, he cannot maintain this action. (6 A. & E. 854; S. C. 2 C. & M. 495; 1 T. R. 378; 5 Bing. 410.)

Until the case of *Hart v. Windsor*, *suprà*, it had been settled law, that a landlord who had demised by deed or writing, allowing the premises to become or remain in such a state as to render them uninhabitable, lost his remedy against the tenant for rent; as where the tenant had no *beneficial occupation*, being compelled to leave the premises through the default of the landlord; this was a good defence to an action by the landlord to recover rent. (*Edwards v. Etherington*, R. & M. 268; *Collins v. Barrow*,

1 M. & R. 112; *Cowie v. Goodwin*, *suprà*.) And so, if the premises were uninhabitable in consequence of being infested by bugs, or in consequence of any other nuisance which it was the landlord's duty to remove, the action could be maintained. *Smith v. Marrable*, *suprà*; *Browne's Actions at Law*, 494.

The case of *Smith v. Marrable* (reported also 7 Jurist.) came before the Court of Exchequer in Hilary Term, 1843, on a motion for a new trial, on the ground of misdirection. It was an action of *assumpsit* for use and occupation—plea, *non-assumpsit*. At the trial before Lord Abinger, C. B., in Middlesex, at the sittings after Michaelmas Term, 1842, it appeared the action was brought to recover rent of a furnished house at Brighton, which had been taken by Sir Thomas Marrable under a *written* agreement, which did not contain any warranty with respect to the condition of the premises; the defendant and his family took possession, and on the following day Lady Marrable complained to the plaintiff that the house was infested with bugs, and from this cause left within a week, offering to pay a week's rent. The Lord Chief Baron told the jury, "that in point of law every house must be taken to be let upon the *implied condition* that there was nothing about it so noxious as to render it uninhabitable," upon which the jury found *for the defendant*. On refusing the motion for a new trial, Parke, B., held the objection of the Chief Baron to be right, observing, that "if the demised premises are incumbered with a nuisance, that no person can reasonably be expected to live in them, the tenant is at liberty to throw them up;" and the Chief Baron also said, "He entertained no doubt on the subject, and thought the defendant was fully justified in leaving the premises as he did." This case was followed and confirmed in the following Michaelmas Term by *Sutton v. Temple*, 12 M. & W., when the same judges, with Gurney and Rolfe, BB., held precisely the same doctrine.

One year only after *Smith v. Marrable* came *Hart v. Windsor*, 12 M. & W. 68, which *entirely overruled all the previous cases*. This was a case also of a *written* contract, under which the defendant became the tenant of a house and garden-ground, which he quitted without notice, alleging that he could not reasonably inhabit, or have any beneficial use or occupation therefrom, by reason of the same "being greatly infested, swarmed, and overrun with various stinking and nasty insects called bugs."

The plaintiff having brought an action for the rent, which was tried before Rolfe, B., at the sittings in Hilary Term, 1844, when the defendant's plea was fully proved, and a verdict found *for the defendant*. Upon a subsequent day in the same term a rule for judgment for the plaintiff, *non obstante veredicto*, was obtained, on the ground that the facts pleaded were *no answer to the action*. After a very lengthened and elaborate argument on showing cause, Parke, B., on a subsequent day, delivered

the judgment of the court, in which he *entirely overruled Smith v. Marrable*, observing that *the court were all of opinion "that there is no contract, still less a condition, implied by law in the demise of real property that it is fit for the purpose for which it is let."* It is much better to let the parties in every case protect their interest themselves by proper stipulations," and the rule was therefore made absolute. Although in this judgment *Smith v. Marrable* is avoided as much as possible, because the facts were not quite identical, it is clear the whole tenor and effect of the judgment is to overrule it and the previous cases.

The present case of *Reynolds v. Lucking*, however, steers clear of all the others referred to in this note, and cited above, the contracts being by *parol*, and seems to have been very properly distinguished and decided by the learned Judge.

J. C. W.

## THE LAW STUDENTS', OR ARTICLED CLERKS' SOCIETY.

WE have been requested to suggest the Rules and Regulations for governing a Provincial Society of Law Students, established for the purpose of discussing moot points. The following is the substance (with some slight alterations) of the Rules of the Law Students' Society which for many years has been allowed the use of a room at the Incorporated Law Society. This legal debating society is very judiciously conducted, and has been productive of much benefit to its members.

This Society is established for the purpose of promoting the improvement of its members in professional knowledge by means of conversations and discussions on legal and jurisprudential subjects.

The Society shall consist of gentlemen who are serving and who have served under articles of clerkship.

Gentlemen desirous of admission are to be nominated, at a meeting, by two members of the Society, and shall be balloted for at the next meeting.

Each member shall pay                      on admission; and a subscription of                      .

The officers of the Society shall be elected yearly, and shall consist of a president, vice-president, a secretary, treasurer, and a committee composed of the president, vice-president, secretary, and six other members.

The president or vice-president, or in their absence, one of the committee, shall preside.

The committee shall have the general management of the Society's affairs, and shall select subjects for discussion.

The meeting shall be held every evening at                      o'clock, except during the long

vacation, and such other times as may be appointed.

The meeting shall be devoted, alternately, to the discussion of points purely legal, and of questions of jurisprudence and historical law.

At the close of each meeting, one member or more shall be appointed, in rotation, to introduce the subject or subjects to be discussed at the next meeting; and thereupon each shall select a subject from the list of questions approved by the committee.

Every member appointed to introduce a subject shall come prepared with a statement, written or verbal, of his opinion and views with respect to it; and if he neglect to do so, or to appoint a substitute, he shall pay a fine of                      .

No topics connected with religion or party politics shall be introduced.

No alteration shall be made in the rules without the consent of two-thirds of the members present at a meeting especially convened for the purpose.

All other questions shall be decided by a simple majority.

We shall take an early opportunity of making some observations on the subjects of discussion, and the mode of conducting the debate.

## NOTES OF THE WEEK.

### COMMENCEMENT OF HILARY TERM.

ALL the Courts of Law and Equity will commence their Sittings on Tuesday next, being the first day of Hilary Term, at ten o'clock, the reception which the Lord Chancellor gives to the judges, Queen's counsel, &c., which prevented the opening of the courts until the afternoon, being by a recent regulation confined to the first days of Easter and Michaelmas Terms, which immediately follow the circuits. We understand there is still some doubt, whether the Lord Chancellor's state of health is such as to enable him to take his seat in the Court of Chancery on the first day of the ensuing term.

### THE IRISH SEALS.

The health of the Lord Chancellor of Ireland is understood to be gradually improving, but as there is no reason to expect that his Lordship would be able, within a short period, to resume the performance of his official duties, the Seals have been put in commission.

### EFFECT OF FINAL ORDER IN INSOLVENCY.

Mr. Gurdon, the judge of the Essex County Court, decided in a case of *Wylie v. Nash*, on

the 16th December, that a final order under the stat. 7 & 8 Vict. c. 96, is a bar to a plaint entered in the County Court, for the recovery of a debt mentioned in the insolvent's schedule.

Mr. Parry, Q. C., the judge of the Oxford County Court, on the 20th December, in a case of *Burtlett v. Blick*, determined that a final order under the 7 & 8 Vict. did not protect the insolvent from having an order made against him under the County Courts Act, for a debt contained in his schedule.

## LAW APPOINTMENTS.

HER Majesty has been pleased to appoint Robert Russell, Esq., Barrister-at-Law, to be Registrar of the Court of Chancery, and Clerk of the Patents for the Island of Jamaica.

Her Majesty has also been pleased to appoint James Watson Sheriff, Esq., Barrister-at-Law, to be coroner for the Island of Antigua.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal granting the office and place of Advocate-General or Judge Martial of her Majesty's Forces to William Goodenough Hayter, Esq., Barrister-at-Law.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Hughes v. Wheeler.* Dec. 8, 1847.

## SUBSTITUTED SERVICE, ORDER OF.

*The court will not make an order for substituted service where there is no good reason to suppose that by this means notice will really reach the party in respect of whom the order is made; but the order is sought only as a means of making the decree formally correct.*

Mr. F. White moved for an order for substituted service against a defendant, who was one of two trustees, and being himself a solicitor had put in his own answer, mentioning no place of residence, and had since become bankrupt and gone abroad, leaving no trace of the place he was gone to.

Lord Langdale refused to make the order. He observed, that the object of substituting service was to make a provision under which notice would in fact reach the party; but here the substitution proposed would be a mockery. It was not suggested that by its means the defendant would really give a knowledge of the proceedings against him. It was, however, a case in which he might probably be able to make a decree in the absence of the party.

*Snook v. Watts.* Nov. 18, 1847.

## WITNESS.—FURTHER EXAMINATION.—

## LUNACY.

*Witnesses who had been examined to prove the execution of a mortgage allowed to be further examined to prove the sanity of the mortgagor at the time of its execution.*

THIS was a motion for leave to examine witnesses who had been previously examined, as to the execution of a mortgage deed, in order to prove the sanity of the mortgagor at the time of its execution, he having under a commission of lunacy, issued subsequently to the taking of the previous evidence, been found a lunatic for

a time extending beyond the date of the execution.

Mr. Turner for the motion, said, that the finding of the jury was not conclusive of his insanity at the time when the settlement was executed. It only raised a presumption which might be rebutted.

Mr. Wright, *contra*.

Lord Langdale said, he thought the plaintiff ought to have leave to examine these witnesses on the matter suggested, on payment of the costs.

## Vice-Chancellor of England.

*Daubney v. Manchester, Sheffield, and Lincolnshire Railway Company.* Dec. 22, 1847.

## RAILWAY COMPANY.—ENTRY ON LAND.—INJUNCTION.

*Where a railway company gave an insufficient notice to one of four tenants in common in fee of intention to take lands, and a bond, the condition of which was that the money should be paid to the four, or some or one of their heirs, executors, administrators, or assigns: Held, that the bond was informal, and an injunction granted to restrain the company from entering on the land.*

IN this case Robert H. Daubney, Mary H. Daubney, J. H. Daubney, and William H. Daubney, were entitled as tenants in common in fee to certain pieces of land which were required by the railway company. On the 18th September, 1847, plaintiff, Robert H. Daubney, received a notice in writing together with an attested copy of a bond. The notice was as follows:—"Take notice that the original bond, of which the annexed is an attested copy, has been left with Mary H. Daubney, on behalf of herself and other parties interested in the hereditaments referred to." The condition of the bond was in the words following:—"Now, therefore, the condition of the above written bond or obligation is such that if the above bounden Manchester, Sheffield, and Lincoln-



shire Railway Company, and the said M. Ellison, and J. J. Smith, or any or either of them, or their or any or either of their successors, heirs, executors, or administrators, shall well and truly pay unto the said Robert H. Daubney, Mary H. Daubney, J. H. Daubney, and W. H. Daubney, or some or one of their heirs, executors, administrators, or assigns, or shall deposit in the Bank of England, for the benefit of the parties interested in the above-mentioned lands, as the case may require, under the provisions and in the manner directed by the said Lands Clauses Consolidation Act, all such purchase-money or compensation as may in the manner provided in and by the said act be determined to be payable by the said railway company, &c." On the 11th of October, 1847, the railway company entered and took possession of the land, upon which plaintiff filed a bill for an injunction to restrain the company from constructing their railway upon the land.

Mr. Bethell and Mr. Taylor, for the plaintiff, now moved for the injunction on the ground that no sufficient notice had been given to plaintiff of the company's intention to purchase the land pursuant to the Lands Clauses Consolidation Act, 8 Vict. c. 18, s. 18, and that the bond was informal in respect of the condition, the owners of the land being tenants in common in fee.

Mr. J. Parker, contra, urged that notice had been given to W. H. Daubney, who had forwarded it to plaintiff, and that was sufficient; besides, by section 85 of the act under which the company had proceeded, no notice was necessary. The company had no means of knowing the title and interests of the parties, and it was impossible at all times to frame a bond so as to correspond to the legal title to the property. The bond ought not, therefore, to be vitiated on account of an informality in the condition.

The Vice-Chancellor said, it appeared to him that the parties had not complied with the terms of the act; neither was the bond in a proper form. The money was to be paid to these four persons, who were tenants in common in fee, or some or one of their heirs, executors, administrators, or assigns: this was an entire departure from the usual language, and clearly wrong. He should therefore grant the injunction.

#### Vice-Chancellor Knight Bruce.

*Greatrex v. Greatrex.* Dec. 4 & 7.

#### PARTNERSHIP.—INJUNCTION.

*A member of a partnership firm, who had removed the partnership books, was at the suit of his co-partner restrained by the court from keeping the books elsewhere than on the partnership premises.*

In this case the bill was filed by Messrs. Chas. and J. F. Greatrex, two members of a firm carrying on business at Walsall, against Thomas Greatrex, another member of the firm, alleging the removal of the partnership books

by the defendant without the consent, and contrary to the wishes, of the plaintiffs, and it prayed a dissolution of the partnership, that the accounts might be taken, and that the defendant might be restrained by the injunction of the court from drawing cheques in the name of the firm, &c., from keeping possession of, or using or intermeddling with the partnership books, or any of the papers, bills, notes, cash, or securities of the said firm, and from hindering or preventing the plaintiffs, or either of them, from having full access to the partnership books, and liberty to inspect or transcribe the same or any of them, when they or either of them should think proper, and from placing, depositing, or keeping the said partnership books, or any of them, or permitting them, or any of them, to be placed, deposited, or kept at any other place than the partnership premises, without the consent of the plaintiffs, &c.

Upon *Speed moving, ex parte*, for this injunction, the Vice-Chancellor granted an interim order as to the cheques, and gave leave to give a notice of action for the 7th of Dec., on which day Russell and Speed moved for the injunction as prayed by the bill. They cited *Lane v. Neudigate*, 10 Ves. 192; and *Whitaker v. Howe*, 2 Bea. 388.

The Vice-Chancellor said the order would be equivalent, or nearly so, to directing the defendant to bring back the books to the place of business; but as in Lord Eldon's time and since, the practice had been so, he would make the order as asked, except that the word "full" must be omitted.

#### Queen's Bench.

(Before the Four Judges.)

*Greville v. Stulze.* Michaelmas Term, 1847.

#### COMMISSION TO EXAMINE WITNESSES ABROAD.

*An order for a commission to examine witnesses abroad under 1 W. 4, c. 22, s. 4, must state "the time, place, and manner of such examination," or a subsequent order must be made supplying these matters. If an order is defective in these respects, and no subsequent order supplying the deficiency is proved to have been made, the examinations taken under a commission thus irregularly issued cannot be received in evidence.*

THE plaintiff brought a writ of error, to reverse a judgment in outlawry, and the issue raised on the pleadings was, whether the plaintiff was, before and at the time of the awarding and issuing the said writ of *exigé facias*, upon which the said judgment in outlawry was pronounced, and thence continually until the time of pronouncing the said judgment of outlawry, and afterwards, in parts beyond the seas, to wit, at Enghien les Bains, in the kingdom of France. The plaintiff put in evidence the depositions of two witnesses, taken under a commission. The order upon which the commission issued was also put in evidence: it was as follows:—

*Greville v. Stulze & others,* } Upon reading, &c., I do order that a commission in this cause do issue to examine on interrogatories *A. O. and C. H.*, witnesses on the part of the plaintiff in error, who now reside at *E.*, in the kingdom of France; and that the commission interrogatories and depositions, when taken, be returned to my chambers in Rolls Gardens, &c., under the hands and seals of the acting commissioners; and that office copies be read in evidence, saving all just exceptions, &c.

(Signed) F. POLLOCK.

The commission itself was directed to three persons, one of whom was the British consul, directing them to cause two witnesses, therein named, to come before them at Paris, and there to examine the said persons on interrogatory on oath. The commissioners were authorised to employ an interpreter, and were directed to examine the witnesses apart.

The case was tried before Patteson, J., in Middlesex, and an objection was taken to the admissibility of the depositions on several grounds, the chief of which was, that the order for the commission made under the 1 W. 4, c. 22, s. 4, did not name the place at which the commission was to be executed, but this objection was overruled, and a verdict was found for the plaintiff. A rule *nisi* having been obtained for a new trial.

Mr. *Martin* and Mr. *E. Beavan* now showed cause. One objection to this order is, that it does not state the place where the commission was to be executed. The statute enables the Courts at Westminster to order a commission to issue for the examination of witnesses on oath at any place, as well out of as within their jurisdiction; and this order alleges that the commission is to issue for the purpose of examining witnesses residing in the kingdom of France. The commission issues regularly under the seal of this court, and it must be assumed that every necessary thing has been done in order to justify the issuing of that commission. If there was any defect, the defendant should have moved to set aside the commission, and should not have allowed it to issue, and after taking the chance of the evidence being favourable, then object to its regularity. A case of *Entwistle v. Dent* was tried before the Lord Chief Baron, at the sittings after Trinity Term, when he ruled that the production of the commission itself was sufficient, without proving the order on which it was made.

Mr. *Barstow*, *contra*. The common law courts derive their power to issue commissions like the present from the statute 1 W. 4, c. 22, and the 4th section requires that "by the same or any subsequent order or orders" the court "shall give all such directions touching the time, place, and manner of such examination as may appear reasonable and just." This order merely directs a commission to issue, and does not name any place where the commission is to be executed, nor has any subsequent order issued supplying this defect. The

foundation of the authority to order the commission to issue is not shown, for the directions of the statute have not been complied with, and the allegation that the witnesses are residing in France will not supply the defect. The case referred to is not applicable here. In that case the order was not produced: here the order was produced, and being defective on the face of it, the commission issued without authority, and the evidence, taken under it, is not receivable. This being a statutory authority, no general implication such as would support the exercise of a common law authority can make it valid.

Lord *Denman*, C. J. This is an objection which I cannot get over, although it is painful to yield to it. By the provisions of the statute the order for the examination of the witness must state the time or place and manner of the examination if out of the jurisdiction. The place must be named in the order. Here is an order not naming any place. There are the names of witnesses who reside in France, but care ought to have been taken to show that the commission was issued to be executed in France. There has not been in this order a compliance with the directions of the statute. I therefore think that without entering into the other matters, as to which we should be ready to make any reasonable presumption, the foundation for this evidence has failed, and the rule must be made absolute.

Mr. Justice *Patteson*. I confess that I thought it doubtful at the trial whether there should not be some authority for the insertion of time and place which are mentioned in the commission itself. There does not appear to be any such authority, for the order does not state either time or place. If we could presume that another order was made, we might support the commission; but we cannot make any such presumption. As to the case which Mr. *Martin* has cited as having been decided by the Lord Chief Baron, it does not appear that any order was produced, and the Chief Baron held that it was not necessary to produce the order. But here it was produced, and there does not appear to be any direction in it as to place, which there ought to be according to the statute. It is for the judge who directs the commission to issue to say where it is to be executed, at what time, and, if there are any particular directions necessary, it is for him to give those directions. It would be for the parties to draw up the terms, and for the judge to ratify them by his order. There is nothing of this kind here, so I do not see what authority there was for the insertion of time and place in the commission.

Mr. Justice *Coleridge*. I am of the same opinion, though with much regret, on both points, namely the necessity of the order naming the place where the commission is to be executed, and the impossibility, when the order has been put in, of presuming that everything has been rightly done. If the objection is sustainable on the first ground, the answer given to it by Mr. *Martin*

cannot be admitted; for though if there was no order put in, a presumption might perhaps be made, yet when the order is put in we must look at it, and then if we find it to be insufficient the commission will fall to the ground. The statute intended that every preliminary as to parties, time, and place, should be settled by the parties and then ratified by the judge; here the order was in blank as to these particulars. *Ex vi termini* to issue a commission includes naming the commissioners. Mr. Martin has been driven to contend that simply on the order to issue a commission the parties have authority to insert what persons they please, where the execution should take place, and at what time. That does not seem to me a fair interpretation of the statute, and the rule must be absolute.

Mr. Justice *Wightman*. If the case wholly depended on the production of the commission, there might be something in the argument of Mr. Martin; but such is not the case. It happens that the authority for issuing the commission is the judge's order, which, being put in, appears to be defective. Any defect in the first order might be supplied by a subsequent order; but we cannot take it for granted that any subsequent order ever issued. There does not here appear to have been any sufficient authority for issuing the commission.

Rule absolute.

#### Court of Bankruptcy.

*In re Ricketts and James, ex parte Flight.*  
Nov. 12, and Dec. 21, 1847.

#### PROOF OF DEBT.—SUFFICIENCY OF GUARANTEE.

*Evidence is admissible of the facts of a transaction to explain a written agreement. The words "having discounted" may mean a minute, a week, or a year ago, and evidence is admissible to explain which it really meant.*

MR. THOMAS FLIGHT, of Bond Court, Walbrook, claimed to prove against the separate estate of the bankrupt, Trevenen James, upon a written guarantee in the following words:—

"London, 15th August, 1845.

"DEAR SIR,—In consideration of your having discounted Mr. W. R. Vigers' note for 4,000*l.*, due 16th Feb. next, I hereby guarantee the payment thereof. Yours truly,

"TREVENEN JAMES."

"To Thomas Flight, Esq., Bond Court."

Mr. *Hoggins* appeared on behalf of Mr. Flight to support the proof, which was opposed by Mr. *Bagley* on the part of the assignees. The case was argued at some length before Mr. Commissioner *Fane*. The cases cited by counsel were—*Wain v. Warlters*, 5 East, 10; *Hawes v. Armstrong*, 1 Bing. N.C. 761; and *Haigh v. Brooks*, 10 Ad. & El. 309. The commissioner's attention was also directed, subsequently to the argument, and before he pronounced judgment, to the recent case of *Gold-*

*shede v. Swan*, reported 1 Exch. R. 154, and 16 Law Jour. 284, and referred to Leg. Obs. ante, p. 203. The points raised by the argument are sufficiently adverted to in the following judgment.

Mr. Commissioner *Fane*, after stating the nature of the claim, and reading the guarantee as above set forth, said—"It was objected that the guarantee had no consideration to support it, the words 'having discounted' importing a past transaction, and therefore not forming a sufficient consideration. It was proposed to show, what the facts of the transaction really were, to establish that the words 'having discounted' meant 'having now discounted,' in which case the discounting and the giving the guarantee would be part of one transaction. It was objected, that the evidence was not admissible. I was, however, of opinion, that the evidence was admissible, because evidence is always admissible of the facts of a transaction, to explain a written agreement concerning the transaction, although evidence of what the parties to the agreement may have said may not be admissible. The facts appear to be, that James was anxious that a promissory note for 4,000*l.*, on which Vigers was liable, and which was payable on the 16th August, should be retired, and on the 15th of August he waited on Flight, to get him to furnish the means for retiring it. Flight had at the time a promissory note for 4,000*l.*, signed by Vigers, dated the 13th of August, which had been sent him by Vigers, to induce him to retire the first promissory note, and a negotiation ensued between James and Flight, which ended in Flight saying, that he would furnish 3,800*l.* to retire the old 4,000*l.* note, if James would furnish the remaining 200*l.*, and guarantee the payment of the new promissory note, dated the 13th. These terms were agreed to by James, upon which Flight desired his clerk to draw a cheque for 3,800*l.*, and at the same time James drew and signed the guarantee in question. It does not exactly appear, at what moment or in what way, James furnished the 200*l.*, but it does appear that the first promissory note was retired by a bill-broker, (Mr. Barber,) who knew where it was, and that he did so on the 15th of August by two cheques, one for 3,800*l.* and the other for 200*l.*, which were credited to Flight in Barber's book, and that James on that day, debited Vigers' account with 200*l.* Now, as a word in the past tense, such as 'having discounted,' includes all past time, it may of course mean a minute ago, as well as a week ago, or a year ago, and facts being admissible to explain, which it really meant, and the facts of this case clearly proving, that it meant a minute ago, the whole was one transaction, and the consideration sufficient. The proof must therefore be admitted."

*In re Lysaght and Smithet.* Dec. 30, 1847.

#### NOTICE OF SUFFICIENCY.—BOND.—SURETIES.

*Where the notice of sufficiency of sureties to a*

bond, given under the stat. 1 & 2 Vict. c. 110, described one of the sureties as a "gentleman," and he turned out to be a clerk, the commissioner refused to approve of the sureties.

AN affidavit of debt having been filed, and notice requiring immediate payment given, pursuant to the stat. 1 & 2 Vict. c. 110, s. 8, the debtors gave notice of their intention to enter into a bond with two sureties, as required by the statute, and now appeared before Mr. Commissioner Evans to approve of the sureties.

Mr. Lloyd, on behalf of the summoning creditor, objected to the sureties on the ground that one of them was improperly described in the affidavit of sufficiency, and notice given by the debtors. The surety objected to was described as, W. J. B. Hammond, of 71, Lombard Street, and 12, Kennington Place, Vauxhall, *Gentleman*: it turned out, however, that Mr.

Hammond was not a gentleman, but a clerk at an office in Lombard Street. It had been decided in *Moss v. Heavyside*, 2 D. & Ry. 772, that a clerk in a mercantile house, described as a "gentleman," was improperly described, and could not be allowed to justify as bail.

Mr. Lawson, on the part of the debtors, submitted, that as the surety had himself sworn that he was a gentleman, his affidavit was conclusive of the fact, and at all events it was not pretended the creditor was misled by the description.

William Charles Rule, a clerk to Mr. Lloyd, was then sworn, and stated, that he had called at 71, Lombard Street, which was the office of the General Steam Navigation Company, in the morning, had seen the proposed surety, (Mr. Hammond,) and ascertained from his own lips, that he was the cashier of that company.

Mr. Commissioner Evans. Under those circumstances, I cannot approve of the sureties.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Equity.

#### PLEADING.

##### AMENDED BILL.

1. *Production of documents*.—On a motion for production of documents, it is for the plaintiff to show from the admissions in the answer that the documents relate to the contents of the bill as it stands when the motion is made. And therefore, where, after an answer admitting possession of certain documents relating to the matters mentioned in the bill, or some of them, the plaintiff amended his bill by striking out part of it and then moved upon that answer, the motion was refused. *Haverfield v. Pyman*, 2 Phill. 202.

2. *After replication*.—An order of course to amend by adding parties obtained after replication is irregular. *Hitchcock v. Jaques*, 9 Beav. 192.

3. *Irregularity*.—A plaintiff having one of the defendants under his control, kept back his answer. Another defendant put in his answer, and after great delay on the part of the plaintiff, moved to dismiss for want of prosecution. The plaintiff, to defeat the motion, obtained an order of course to amend. *Held*, that as there was an answer outstanding, the order to amend could not be considered irregular; but it was afterwards discharged on other grounds. *Forman v. Gray*, 9 Beav. 196.

4. *Petition*.—Facts occurred after a petition has been answered cannot be introduced into it by amendment. *Doubtfire v. Elworthy*, 15 Sim. 77.

5. *Parties*.—An objection for want of parties having been allowed at the hearing, the plaintiffs obtained an order for leave to amend by adding parties. They did not, however, amend, but again brought on the cause for hearing without having discharged the order or stated on the record why they had not acted upon it.

The court refused to proceed with the hearing. *Davis v. Chanter*, 15 Sim. 93.

#### ATTORNEY-GENERAL.

*See Infant*.

#### DEMURRER.

*See Parties*, 2.

#### DISCOVERY.

The plaintiff claimed an estate which was in the defendant's possession, and prayed for an account and payment of the rents received by the defendant, and for a discovery of all the documents in the defendant's possession relating to the matters contained in the bill. The defendant pleaded the instrument under which he claimed to all the relief and to so much of the discovery as related to the rents, and answered to the matters which his plea did not purport to cover, and set forth a list of all the documents in his possession relating to the matters in the bill, except such of them as related to the rents.

*Held*, that the plaintiff was entitled to a discovery of those documents also. *Rigby v. Rigby*, 15 Sim. 90.

#### EXECUTOR.

If the will of a testator is stated to have been proved by A., his executor in the Prerogative Court, and the will of A. to have been proved by B., his executor in the proper Ecclesiastical Court, *non constat* that B. is the personal representative of the original testator. *Jossaume v. Abbot*, 15 Sim. 127.

#### INFANT.

*Attorney-General's answer*.—As to the necessity of infants and the Attorney-General raising the points of their defence specifically by the answer, instead of putting in what is termed the common answer.

In a case in which the defence of an infant

had not been properly raised and proved, a decree was made for the plaintiff without prejudice to any bill to be filed by the infant within six months to establish his right. *Lane v. Hardwicke*, 9 Beav. 148.

## INTERROGATORY.

The last interrogatory for the examination of witnesses expunged and the deposition to it suppressed because it did not contain the words "or either of them." *Peacock v. Kernot*, 15 Sim. 71.

## PARTIES.

1. *Breach of trust*.—A party entitled to a moiety of an ascertained fund cannot maintain a suit for payment of his share without making the person entitled to the other moiety a party, if, owing to a breach of trust, the whole fund is not forthcoming.

*Semble*: And the decision in *Perry v. Knott*, (5 Beav. 293), to the contrary disapproved. *Lenaghan v. Smith*, 2 Phill. 301.

2. *Demurrer*.—*Husband and wife*.—Husband and wife sued, amongst other things, for an account of the rents of her copyhold estate. The wife died. *Held*, on demurrer, that it was not necessary to make her personal representatives a party to a bill to revive the suit. Upon overruling the demurrer, liberty was reserved to the defendant to raise the same at the hearing. *Jones v. Skipworth*, 9 Beav. 237.

3. A bill brought by *A.* on behalf of himself and all other shareholders in a company provisionally registered, except the defendants, against the provisional committee, and praying relief against the defendants on the ground that the concern had been brought immaturity to an end by reason of their fraud and mismanagement, charged that the other shareholders were unknown to the plaintiff, and, if known, would be too numerous to be made parties to the suit. Demurrer for want of parties overruled. *Wilson v. Stanhope*, 2 Coll. 629.

Case cited in the judgment: *Cockburn v. Thompson*, 16 Ves. 321.

See *Amended Bill*, 5; *Supplemental Bill*, 1.

## REPLICATION.

See *Amended Bill*, 2.

## PLEA.

Where a defendant, neither pleading nor demurring to any part of a bill, answers it, whether sufficiently or insufficiently, he is generally thenceforth precluded from filing a plea in the suit, notwithstanding the bill be amended. Where, therefore, an original bill was answered and the bill was then amended, the amended bill not differing from the original bill in parties or subject-matter, though differing from it materially as to the extent of discovery as sought in relation to the main charges and allegations against the defendant, a plea to the amended bill was overruled. *Esdaile v. Molyneux*, 2 Coll. 636.

## SUPPLEMENTAL BILL.

1. *Parties*.—A suit was instituted by legatees whose interest (upon the happening of a contingency) might vest in the next of kin against the executors alone. The next of kin were brought before the court by supplemental bill. *Held*, that the executors were not improper parties to such supplemental bill. *Parker v. Parker*, 9 Beav. 144.

2. *A.* filed an original bill and afterwards another bill which he prayed might be taken as supplemental to the former against *B.* Some of the statements in the latter were not only inconsistent with, but contradictory to, some of the statements in the former. Both bills were dismissed with costs. *Blackburn v. Staniland*, 15 Sim. 64.

3. After an order on further directions had been made which contained a declaration as to the rights of the plaintiff, he discovered that *A.* ought to have been made a party to the suit, and filed a supplemental bill to bring him before the court. On the hearing of the supplemental suit, *A.* objected that the declaration was erroneous in law, but the court said that the same declaration must be made in the supplemental as had been made in the original suit, for otherwise the record would be inconsistent with itself, and that *A.* must present a petition of re-hearing. *Jenkins v. Cross*, 15 Sim. 76.

## BUSINESS OF THE COURTS.

## CHANCERY SITTINGS.

## Master of the Rolls.

## AT WESTMINSTER.

|           |         |   |
|-----------|---------|---|
| Tuesday   | Jan. 11 | Motions.  |
| Wednesday | . . 12  | { Petitions in the General Paper.                               |
| Thursday  | . . 13  | { Pleas, Demurrers, Causes, Exceptions, and Further Directions. |
| Friday    | . . 14  |   |
| Saturday  | . . 15  |   |
| Monday    | . . 17  |   |
| Tuesday   | . . 18  |   |
| Wednesday | . . 19  | { Motions.  |
| Thursday  | . . 20  |   |

|           |          |   |
|-----------|----------|---|
| Friday    | . . . 21 | { Pleas, Demurrers, Causes, Exceptions, and Further Directions. |
| Saturday  | . . . 22 |   |
| Monday    | . . . 24 |   |
| Tuesday   | . . . 25 |   |
| Wednesday | . . . 26 | { Motions.  |
| Thursday  | . . . 27 |   |
| Friday    | . . . 28 | { Pleas, Demurrers, Causes, Exceptions, and Further Directions. |
| Saturday  | . . . 29 | { Petitions in the General Paper.                               |
| Monday    | . . . 31 | Motions.  |

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

## NEW TRIALS.

Remaining undetermined at the end of the Sittings after Michaelmas Term, 1847.

*Hilary Term, 1846.*

*London.*—The Queen v. F. Kensington—Mr. Whitehurst.

*Easter Term, 1846.*

*York.*—Worth & another v. Gresham—Dundas.  
*Liverpool.*—Doe d. Hayward v. Tinslay—Crompton.

*Hilary Term, 1847.*

*Middlesex.*—The Queen v. Button—Serjeant Allen.

*London.*—Penniall v. Harbone—Knowles.

*Middlesex.*—Henderson v. Henderson—Barstow.

*London.*—Mitchell v. Moore—Cockburn.

*Tried during Hilary Term, 1847.*

*Middlesex.*—Flower v. Roper—Wordsworth.

*Easter Term, 1847.*

*Middlesex.*—The Queen v. Mary Nixon—Serjeant C. C. Jones.

*London.*—Curling v. Young and others—Humfrey.

*London.*—Newton and another v. Belcher—Crowder.

*London.*—Burrows and another v. Gabriel and another—Same.

*Kent.*—Lilley, a pauper, v. Elwin—Serjeant Shee.

*Surrey.*—Parratt v. Newte—Serjeant C. C. Jones.

*Bedford.*—Doe d. Crawley v. Gutteridge—O'Mally.

*Suffolk.*—Pye v. Mumford—Andrews.

*Lincoln.*—Huntley v. Russell and another—Whitehurst.

*Warwick.*—Bower v. Wood—Same.

*Lancaster.*—Turner v. Hartley—Martin.

*Durham.*—Wren v. Heslop and another—Knowles.

*Durham.*—Wright v. Gibson—Same.

*City of York.*—Nicol v. Alison—Same.

*York.*—Pollock, the younger v. Stables—Baines.

*York.*—Kilner and another v. Preston—Same.

*York.*—Lee and others v. Dawson—Same.

*Liverpool.*—Walker v. Mellor and another—W. H. Watson.

*Liverpool.*—Yates v. Fenton—Knowles.

*Flint.*—M'Killock v. Cooke—Townshend.

*Chester.*—Sutton v. Swanwick, Esq.—Chilton.

*Worcester.*—Cheshire v. Hair—Godson.

*Hereford.*—Doe d. Huck, a pauper, v. Rimall and others—Same.

*Gloucester.*—Parratt v. Lambert—Same.

*Somerset.*—Robertson and another v. Norris—Crowder.

*Somerset.*—The Queen v. Inhabitants of Tything, East Mark—Cockburn.

*Somerset.*—The Queen v. Inhabitants of Tything of Moore—Same.

*Tried during Easter Term, 1847.*

*Middlesex.*—Levi v. Irwin—Charnock.

*Trinity Term, 1847.*

*Middlesex.*—Clayards v. Dethick and another—Miller.

*London.*—Wallington v. Lambert, Bart. (sued &c.)—Chambers.

*London.*—Crompton v. Green—Petersdorff.

*London.*—Russell v. Smith—W. H. Watson.

*Michaelmas Term, 1847.*

*Middlesex.*—Hilton v. El. Granville—Attorney-General.

*Middlesex.*—Same v. Same—Serjeant Talfourd.

*Middlesex.*—The Queen v. Moreau—Sir F. Theigier.

*Middlesex.*—Boosey v. Davidson—Serjeant Shee.

*London.*—Steele v. Hoe—W. H. Watson.

*London.*—Fisher v. Royal Exchange Assurance Company—Sir F. Theigier.

*London.*—Archibald v. Tatham—Same.

*London.*—Newton v. Liddiard—Chambers.

*Suffolk.*—Ringham v. Clements—Serjeant Byles.

*Gloucester.*—Pike v. Stevens, Esq.—Keating.

*York.*—Anderson v. Boynton—Martin.

*York.*—Charter v. Greame and another—Knowles.

*Durham.*—Hadwick v. Heslop and another—Bliss for defendant Heslop.

*Durham.*—Humble v. Hunter—W. H. Watson.

*Liverpool.*—Bell, P. O. v. Lord Ingestre—Martin.

*Liverpool.*—Norris v. Fresh—Knowles.

*Devon.*—Dingle v. Baker—Serjeant Kinglake.

*Devon.*—Ford v. Widdicombe—Crowder.

*Devon.*—Same v. Same—Serjeant Kinglake.

*Bristol.*—Dyer v. Cowley—Same.

*Kent.*—Wray v. Toke and another—Lush.

*Kent.*—Giles sen. and anr. v. Groves—Chambers.

*Flint.*—Edwards and Wife v. Williams—Attorney-General.

*Flint.*—Roberts v. Campbell—Welsby.

## SPECIAL CASES AND DEMURRERS.

*Hilary Term, 1848.*

Whitmore—Morris, Bt., v. Dk. of Beaufort, dem.

Philpot.—Morrell v. Biddle, special case.

Bigg and Co.—Jones, executors, &c. v. Meares, executors, &c., special case.

White.—Doe d. Lord v. Kingsbury, special case.

Mortimer.—Newbatt v. Salmond and others, dem.

Clowes & Co.—Doe d. Snape v. Nevill, special case.

Tribe.—Baley v. Harris, dem.

Todd.—Attwood v. Joliffe, Clerk, and another, special case.

Lewis and L.—Bunn v. Lind, dem.

Lutly and B.—The Surrey Iron Railway Company v. Chaplin, dem.

Havenscroft.—Hall v. Taylor, clk., dem.

Gregory and Co.—Williamson, v. Davies, dem.

Gough.—Bowers v. Nixon, dem.

Hodgson and B.—Cochrane v. Young, dem.

Kennedy.—Jones v. Greatley, dem.

C. Bell.—Clegg and others v. Dearden, special verdict.

Hughes and Co.—Berkeley and another v. W. Ingram, dem.

Westmacott and Co.—Spencer and another v. Haggiadur in error, error.

Sawyer and B.—Doe d. Patrick v. Royle, clk. and wife, special case.

Roy & Co.—Doe dem. Smith v. Birkin, special case.

Williamson & H.—Dails v. Lloyd and another, special case.

Ashley.—Freeman and Wife v. Bateley, dem.

Johnson and Co.—Abney, Esq. v. Dewbery, dem.

Same.—Same v. Hucknall, dem.

Same.—Same v. Worrall, dem.

Hawkins.—Coakes v. Sherrington, award.

Cree and Son.—Christopherson v. Bare, dem.

Coode and Co.—Doe d. Millett, special case.

Bolton.—Ostler v. Cooke and others, special case.

Smith.—Pittway v. Chilcote, dem.

Chilton and Co.—Cutler v. Bower, dem.

Kinsey.—Doe d. Pennington v. Taniers, award.

Whalley.—Penson v. Harston, dem.

Whalley.—Meacock v. Harston, dem.

**Nixon.**—W. A. Ghialin v. Gregory and another, dem. to deft. Gregory's pleas.  
**Same.**—Davison v. Wilson and others, dem.  
**Williams, J. Griffiths v. Lewis, sued, &c., dem.**  
**Coppock.**—Collett v. Curling, dem.  
**Same.**—Collett v. Curling, John, dem.

### Common Pleas.

*Remanet Paper of Hilary Term, 1848.*

#### Enlarged Rules.

To 1st day.—In the matter of Wm. Pyne, gent.  
 .. .. Elderton v. Emmeus, Sec.. &c.  
 .. .. Batty, an infant v. Marriott.  
 .. .. Boosey v. Tolkien.  
 To 5th day.—Smith and another, Ex., v. Earl  
 Charleville.

*New Trials of Michaelmas Term, 1846.*

**Cornwall.**—Doe (Lord) v. Crago.  
**Cornwall.**—Coode v. Cayzer.  
**Derby.**—Cox, surviving, &c. v. Glue.  
**Derby.**—Same v. Saint.  
**Derby.**—Same v. Mousley.  
**Derby.**—Batho and another v. Batthyany.  
**Warwick.**—Valpy and others, assignees, &c. v.  
 Sanders and another.  
**Warwick.**—Tunnicliff v. Tedd.

*New Trials of Hilary Term last.*

**Middlesex.**—Streeter v. Bartlett.  
**London.**—Hitchin v. Groome.  
**London.**—Smith and others, assignees, v. Watson.  
**London.**—Brown v. Chapman.

*New Trials of Easter Term last.*

**Middlesex.**—Morgan and another, ex. v. Earl of  
 Abergavenny.

**Middlesex.**—Thompson v. Stocken.

**Middlesex.**—Hume v. Davis.

**Middlesex.**—Goddard v. Dobson and another.

**Middlesex.**—Finney v. Tootell.

**Middlesex.**—Murray and others v. Hull.

**Middlesex.**—Lindus v. Bradwell.

**London.**—Nickels v. Ross, jun.

**London.**—Same v. Same.

**London.**—Humphreys v. Shuttleworth.

**London.**—Goodlake v. King.

**London.**—Green v. Morson and another.

**London.**—Hopwood v. Thorn.

**London.**—Barker v. Griffiths.

**London.**—Perry v. Parr.

**London.**—Blackie v. Pidding.

**Surrey.**—Eyre v. Scovell and others.

**Denbigh.**—Beech v. Jones.

**Chester.**—Chaddock v. Wilbraham and another.

**Chester.**—Worthington v. Warrington.

**Salop.**—Doe (Bather) v. Brayne and another.

**Hants.**—Ansell v. Richards.

**Somerset.**—Card v. Case.

**Norfolk.**—Garrard v. Tuck (in dower.)

**Suffolk.**—Thorpe v. Barber and another.

**Suffolk.**—Vipan v. Gay and others.

**Suffolk.**—Same v. Same.

**Brecon.**—Griffiths v. Powell.

**Liverpool.**—Howden v. Standish, Esq.

*New Trials of Trinity Term last.*

**Middlesex.**—Barnes, administrator, v. Wurd.

**Middlesex.**—Young v. Geiger.

**Middlesex.**—Same v. Same.

**London.**—Alexander v. M'Kenzie, pub. offi.

**London.**—Belcher & others, assignees, v. Patten.

**London.**—Doe dem Royle and others v. Allison.

**London.**—Same v. Same.

*New Trials of Michaelmas Term last.*

**Middlesex.**—Hopwood v. Whaley.

**Middlesex.**—Collins v. Bennett and others, exors.

**Middlesex.**—Jenkinson and another v. Raphael.

**Middlesex.**—Joll and another v. Downes.

**Middlesex.**—Doe (Cotesworth and others) v.  
 Skinner.

**Middlesex.**—Edmonds and others v. Challis and  
 another.

**Middlesex.**—King v. Jones.

**Middlesex.**—Nind v. Arthur.

**London.**—Blandy v. De Burgh.

**London.**—Powell v. Bradbury and another.

**London.**—Beard v. Egerton and others.

**London.**—Croll v. Edge.

**London.**—Mauger and another v. Brightman and  
 others.

**London.**—Same v. Same.

**London.**—Smith v. Roberts and others.

**London.**—Daw, jr. v. Butler and another.

**London.**—Leader and another v. Purday.

**London.**—Garrold v. Smith.

**London.**—Same v. Same.

**Hants.**—Harvey v. Johnston.

**Somerset.**—Gregory v. Corner.

**Wills.**—Townshend v. Sergrove.

**Surrey.**—Armstrong v. Christiani.

**Surrey.**—Brown v. Tabernacle.

**Surrey.**—Fitzgerald v. Fitzgerald.

**Kent.**—Lawes and another v. Brown and another.

**Warwick.**—Farleton v. King.

**Leicester.**—Edwards v. Lawless.

**Norfolk.**—Huggins, jr. v. Bailey.

**Suffolk.**—Young v. Raincock.

**Worcester.**—Boraston v. Frances.

**Stafford.**—Humphries v. Longmore and another.

**Monmouth.**—Crosfield v. Morrison.

### CUP. AD. VULT.

Patteson and others v. Holland and others.

To stand over till the sci. fa. in Queen's Bench  
 is disposed of.

Brown and others v. Mallett.

Smart and another v. Sanders and others.

Owen v. Challis.

Dicker v. Jackson.

Curling v. Cox.

Brown v. De Winton.

Gay and another v. Sander.

Doe (Miller and others), v. Claridge.

*Demurrer Paper of Hilary Term, 1848.*

Saturday 15th Jan.

Cocks v. Purday.

Pilbrow v. Pilbrow's Atmospheric Railway and  
 Canal Propulsion Company.

Harris v. Marten, sued, &c.

Smith v. Kenrick.

Hayward v. Bennett.

Engstrom and others v. Brightman and others.

Smith v. Marsack.

Peter v. Daniel.

Tripp v. Shrapnell.

Mortimer and others v. Hartley and others.

Doe (dem. Duntze) v. Duntze, Bart.

White and others v. Woodward.

Finlayson v. Lawrence.

Penrice v. Penrice.

Same v. Same.

Lord Newborough and others v. Schroder.

Bickford v. Parson and another.

Hoppe v. Gordon.

Humfrey, a lunatic, v. Gery.

Kepp and another v. Wiggett and others.

Morrison v. Chadwick.

Frazer v. Hemsworth.

Sanderson v. Dobson.

Astley v. Fisher.

Reynolds v. Read.

Holland, Wm. v. King and another.



Queen's Bench.—Crown Paper.

Hilary Term, 1848.

- Bucks.*—The Queen v. The Great Western Railway Company.  
*Same v. Same.*  
*Warwickshire.*—The Queen v. Thomas Collins, (part heard.)  
*Middlesex.*—The Queen v. William Belton, pt. hd.  
*Middlesex.*—The Queen v. Charles Saffrey.  
*Middlesex.*—The Queen v. Morris Myers.  
*Bucks.*—The Queen v. The Churchwardens of Ashe, Hants.  
*Middlesex.*—The Queen v. The Inhabitants of Hammersmith.  
*Cheshire.*—The Queen v. The Inhabitants of Macclesfield with Todmorden.  
*Staffordshire.*—The Queen v. John Keen.  
*Carnarvonshire.*—The Queen v. The Inhabitants of Holywell, Flintshire.  
*Cornwall.*—The Queen v. Henry Nicholls.  
*Worcestershire.*—The Queen v. The Commissioners of Dudley Improvements.  
*Lancashire.*—The Queen v. James Lord.  
*Wilts.*—The Queen v. The Inhabitants of St. Thomas, New Sarum.  
*Lincolnshire.*—The Queen v. The Inhabitants of Coningsby.  
*Yorkshire.*—The Queen v. The Inhabitants of Carlton.  
*Yorkshire.*—The Queen v. The Inhabitants of Ad-dingham.  
*Wilts.*—The Queen v. The Inhabitants of Colerne.  
*Devonshire.*—The Queen v. The Inhabitants of East Stonehouse.  
*Yorkshire.*—The Queen v. The Inhabitants of Gomersal.  
*Leicestershire.*—The Queen v. The Rev. E. B. Shaw, clk.  
*England.*—The Queen v. The Commissioners of Stamps and Taxes.  
*Westmoreland.*—The Queen v. Martin Irving, Esq. (re Anderson.)  
*Westmoreland.*—The Queen v. Martin Irving, Esq. (re Robinson.)  
*Middlesex.*—The Queen v. The Inhabitants of St. Pancras, (with Hackney.)  
*Middlesex.*—The Queen v. The Inhabitants of St. Pancras, (with St. Luke.)  
*Surrey.*—The Queen v. The London and South Western Railway Company.  
*Yorkshire.*—The Queen v. The Inhabitants of Monk Breton.  
*Lancashire.*—The Queen v. John Armitage.  
*Essex.*—The Queen v. The Inhabitants of Witham.  
*Surrey.*—The Queen v. The Inhabitants of White-chapel, (Middlesex.)  
*Cornwall.*—The Queen v. Richard William Riley.  
*West Riding, Yorkshire.*—The Queen v. The Churchwardens, &c. of Longwood.  
*Devonshire.*—The Queen v. Wm. Warren & others. (feoffees, &c.)  
*Cambridge.*—The Queen v. The Inhabitants of Ashwell, Herts.  
*Surrey.*—The Queen v. Henry Chasemore.  
*West Riding of Yorkshire.*—The Queen v. The Inhabitants of Ovendon.  
*West Riding of Yorkshire.*—The Queen v. The Inhabitants of Aldborough.  
*Cheshire.*—The Queen v. The Inhabitants of Pott Shrigley.  
*Cheshire.*—The Queen v. The Inhabitants of Macclesfield (with Ashby-de-la-Zouch.)  
*Durham.*—The Queen v. Mayor, &c., of Sunder-land.  
*West Riding, Yorkshire.*—The Queen v. James Preston and another (Bradley.)  
*West Riding, Yorkshire.*—The Queen v. Joseph Longbottom and another (Fartown.)  
*Lancashire.*—The Queen v. The Inhabitants of Sheffield (Kirby and children.)  
*Lancashire.*—The Queen v. The same (Lye and family.)  
*Colchester.*—The Queen v. The Inhabitants of St. Giles.  
*Lancashire.*—The Queen v. The Overseers of Salford.  
*England and Wales.*—The Queen v. The Tithe Commissioners.  
*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Halifax (with Alnwick.)  
*Middlesex.*—The Queen v. The Inhabitants of Harrow on the Hill.  
*Kent.*—The Queen v. The Inhabitants of Chatham.  
*Worcestershire.*—The Queen v. J. M. G. Cheek and another, Justices, &c.  
*Wiltshire.*—The Queen v. The Inhabitants of Shepton Mallett.  
*Cheshire.*—The Queen v. The Inhabitants of Glossop (Denbighshire.)  
*Warwickshire.*—The Queen v. The Inhabitants of St. Michael (Coventry.)  
*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Halifax (with Rishworth.)  
*Leicestershire.*—The Queen v. The Inhabitants of St. Margaret.  
*Surrey.*—The Queen v. The Inhabitants of Christchurch.  
*Kingston-on-Hull.*—The Queen v. John Moxon.  
*Surrey.*—The Queen v. the Inhabitants of Rotherhithe.  
*Plymouth.*—The Queen v. The Inhabitants of St. Andrew.  
*Middlesex.*—The Queen v. Hammersmith Bridge Company.  
*Surrey.*—The Queen v. The Inhabitants of Croydon.  
*Wilts.*—The Queen v. The Inhabitants of Seend.  
*Cambridgeshire.*—The Queen v. The Inhabitants of Melton (Suffolk.)  
*Lancashire.*—The Queen v. Henry Whittles.  
*West Riding, Yorkshire.*—The Queen v. The Inhabitants of Mirfield.  
*Cambridge.*—The Queen v. The Inhabitants of St. Ebbe (Oxford.)  
*Gloucestershire.*—The Queen v. John Read and others.  
*West Riding, Yorkshire.*—The Queen v. George Grant and others.  
*Derbyshire.*—The Queen v. Robert Arkwright, Esq.  
*Great Yarmouth.*—The Queen v. Edward Har-bord Lushington, Preston.  
*Essex.*—The Queen v. Churchwardens, &c., of Hatfield Peverel.  
*Kent.*—The Queen v. The Inhabitants of Maid-ne.  
*Northamptonshire.*—The Queen v. Lord and Stew-ard of Weedon Beck.  
*Lancashire.*—The Queen v. William Adam Hul-on.  
*Monmouthshire.*—The Queen v. The Inhabitants of Bedwellty.  
*Devonshire.*—The Queen v. The Inhabitants of Cheriton Fitzpaine

## NISI PRIUS CAUSE LISTS.

REMANETS FROM MICHAELMAS TERM, 1847.

*Queen's Bench.**Middlesex.*

|   |  |  |   |
|---|--|--|---|
| Sir R. Sydney<br>Johnson, Son, and W.<br>S. B. Hamer<br>M. Fraser<br>Adlington and Co.  | Cahill<br>Rowe<br>Davies<br>Williams<br>Bastone and another, ex-<br>cutrix, &c.  | S. J. Macdonald (stayed)<br>Cope (stayed)<br>S. J. Wilkinson (stayed)<br>S. J. Whiteway (inj.)   | Dt. Bolton<br>Prom. Chester<br>Prom. Howard<br>Prom. Mardon and P.  |
| Elderton and H.<br>Johnson, Son, and W.   | Fiddes<br>Crowther, admor., &c. (inj.)   | S. J. Ross (inj.)<br>S. J. Wm. Toogood (inj.)<br>Edwards and another, sur-<br>viving executors   | Dt. Chadwick<br>Prom. Campbell and A.<br>Dt. Williamson and H.<br>Sci. fa. Wadeson  |
| C. J. Jones<br>Becke<br>Jno. Lewis<br>Thomas M. Parker<br>Ablett<br>Person<br>Thomas Fuller<br>Oliverson and Co.<br>Everest and Co.<br>Wontner                    | The Queen<br>Becke (stayed)<br>Moon (stayed)<br>Clerk (inj.)<br>Neal (inj.)<br>Flower<br>The Queen<br>Doe d. Peacock<br>Clutterbuck (inj.)<br>The Queen  | S. J. Craufurd<br>Parish and another<br>Connop<br>S. J. Hughes<br>Ward<br>S. J. Maskelyne<br>S. J. The Justices of Devon<br>S. J. Frere<br>Carter, exors., &c.<br>Johnson and others | Prom. Mardon and P.<br>Dt. Chadwick<br>Prom. Campbell and A.<br>Dt. Williamson and H.<br>Sci. fa. Wadeson<br>Dt. Helme and Johnson<br>Ca. Lewis<br>Pro. Burrell<br>Pro. Carlon and H.<br>Kearsey and Co.<br>Beavor and B.<br>Eject. Vizard and Co.<br>Pro. Bell<br>Tres. E. Lewis in person,<br>E. Lewis deft.'s at-<br>[torney |
| Swan<br>Warneford   | Goodchild<br>Duke of Brunswick and<br>Luneburg   | Richard<br>S. J. Pepper  | Ca. Crocker   |
| Stokes and Co.  | The London and Black-<br>wall Rail, Co.  | S. J. Scott and another<br>S. J. Coupland<br>S. J. Macken  | Covt. Tyrrell<br>Ca. Walker and G.<br>Pro. Wright and Co.   |
| John Bell<br>Wm. Day<br>Warneford   | Hoare<br>Dawson<br>Duke of Brunswick and<br>Luneburg   | S. J. Crowl<br>S. J. Weiss   | Ca. Crocker<br>Pro. Whitcombe   |
| Thomas M. Parker<br>Wood and B.   | Clerk<br>Doe dem. Rump and an-<br>other  | S. J. Cullum<br>S. J. Duncan   | Ejt. Jennings and Co.<br>Pro. In person   |
| White and B.<br>R. Powell<br>J. Aldridge<br>Raven and B.<br>Same<br>Bickley<br>Hodgson and B.<br>C. R. Berkeley<br>Buchanan<br>Wontner<br>In person<br>John Wells | Varly and others<br>Reeve<br>Robins<br>Morris<br>Same<br>Emerson<br>The Queen<br>Morton<br>Flight<br>Allen<br>Richards<br>Turquand and others, as-<br>signees  | S. J. Gloag<br>S. J. Steele<br>S. J. Lamb<br>S. J. Arnold<br>Manning<br>S. J. Harrison<br>Ion<br>Petheridge<br>S. J. Capel and others<br>Moore<br>Stringer and others, ex-<br>cutrix | Pro. Bush and M.<br>Pro. Woolley<br>Dt. Stables and B.<br>Dt. Same<br>Ca. Games<br>Indt. F. Harrison<br>Pro. C. Jay<br>Pro. Jas. Bird<br>Pro. Vallance and N.<br>Dt. Cooper   |
| Wm. Jones<br>Parkes<br>De Medina<br>Monkhouse<br>G. Wray<br>Ford<br>H. H. Poole<br>Galsworthy and N.<br>Wakeling<br>Same<br>H. J. Jones<br>Warneford              | Peers, (a pauper)<br>Ward and another<br>Levy<br>Marshall<br>Stevens, survg. &c.<br>Ford<br>Doe dem. Buddler<br>Balls<br>Harrison, named, &c.<br>Lock, jun.<br>Clarke<br>The Duke of Brunswick<br>and Luneburg | Simco<br>Casse<br>Jacobs<br>S. J. Chapman<br>Boulter<br>Lady Thynne<br>Lines<br>Green and others<br>Amis<br>Ashton<br>S. J. Challis and others<br>S. J. Ghislin                      | Issue, Phillips<br>Ca. Drew and S.<br>Pro. Orchard<br>Ca. In person<br>Pro. Helder<br>Tres. W. H. Davis<br>Pro. In person<br>Ejt. Clarke<br>Pro. Manning<br>Tres. J. Duncombe<br>Tres. S. W. Johnson<br>Tres. Kilgour and P.  |
| In person<br>Parke, F. and Co.<br>W. Smith<br>Same  | Cobbett, (a pauper)<br>Doe dem. Branfil<br>Winckworth<br>Banks   | Hudson<br>Lathanque<br>Frankenstein<br>Tanner  | Ca. H. Crocker<br>Tres. Meggison and Co.<br>Ejt. Ashley<br>Dt. Wells<br>Dt. Orlebar   |

|                          |                                       |                                |                          |
|--------------------------|---------------------------------------|--------------------------------|--------------------------|
| H. W. Cross              | Tyler                                 | Tabor                          | F. Issue, Dolman and Co. |
| Briggs and Son           | Howard                                | Clarkson                       | Pro. Pontifex and M.     |
| Allen and N.             | Ogden                                 | Bracher                        | Dt. Mardon and P.        |
| John Bell                | Reid                                  | Kitto                          | Dt. Simpson and Co.      |
| Same                     | Houghton                              | Hennett                        | Dt. W. O. and W. Hunt    |
| R. K. Lane               | Lane                                  | Richardson                     | F. Issue, Veal and Son   |
| Same                     | Webb, admix., &c.                     | M. Rimell                      | Dt. Hicks                |
| Same                     | Same                                  | R. Rimell                      | Dt. Same                 |
| Currie, W. and W.        | Pigott and others                     | S. J. King                     | F. Issue, Towsey         |
| Same                     | Same                                  | S. J. Clement and others       | F. Issue, Espin          |
| Davis                    | Abitbol                               | S. J. Beckett                  | Pro. In person           |
| J. E. Holmes             | Bedford                               | Romans                         | Sturmey and S.           |
| Toogood                  | Brown                                 | S. J. Ward                     | Dt. Elmslie and P.       |
| Archbutt                 | Haworth and another                   | Parsons                        | Dt. Gray                 |
| Hodgson and B.           | Minister                              | Chappell and another           | Ca. Parker               |
| Same                     | Hulse and another                     | Esdaile and others             | Cov. Venning and Co.     |
| Trail                    | Parry                                 | Berry and others               | Tres. G. Clark           |
| Corfield                 | Forster                               | Fooks                          | Holcombe                 |
| Buckle, (plt. in person) | The Queen                             | Wm. Jones                      | Indt. In person          |
| James Wright             | Harrison                              | Flitch                         | Pro. Sudlow and Co.      |
| Same                     | Wren and others                       | Clarke                         | Pro. Phipps              |
| Thompson                 | Tidbury, (a pauper)                   | Bryant                         | Ca. Jennings             |
| Wm. Palmer               | Besant                                | Greaves                        | Pro. In person           |
| J. C. Fisher             | The Queen                             | Sarah Gale and two others      | Indt. Chisholm           |
| Warneford                | The Duke of Brunswick<br>and Luneburg | S. J. Pearson                  | Ca. Crocker              |
| J. Hudson (in person)    | The Queen                             | Bearns                         | Indt. In person          |
| Yallop                   | Kymer                                 | S. J. De Wintur and others     | Ca. J. Williams          |
| Warneford                | The Duke of Brunswick<br>and Luneburg | S. J. Baker                    | Ca. W. Berry             |
| Tate                     | Brown                                 | S. J. Andrew                   | Pro. Marten and Co.      |
| W. Williams              | Robertson                             | Rogers                         | Dt. Robson               |
| Thos. Dignam             | Dignam                                | Lord Thos. Pelham Clin-<br>ton | Covt. Gridley            |
| Marsden                  | Doe d. Bowers                         | Baker                          | Ejt. Ware                |
| Mawe                     | Gibbs                                 | S. J. Scard                    | Pro. Miller and Co.      |
| C. Robson                | Lawes                                 | Whatford                       | Pro. Galsworthy and W.   |
| J. Strutt                | Parratt                               | S. J. Corsack                  | Pro. Birch and B.        |
| Triston                  | The Queen                             | S. J. Hardey                   | Perj. Walter and P.      |
| Warneford                | The D. of Brunswick                   | S. J. James                    | Ca. H. D. Vallance.      |

**Common Pleas.**

*Middlesex.*

|                   |                      |                                 |  |
|-------------------|----------------------|---------------------------------|--|
| Clayton and S.    | Hargrave             | S. J. Hargrave                  | Prom. W. and R. B. Baker                   |
| Melton            | J. G. Fearn          | S. J. Countess Waldegrave       | Prom. Pearson                              |
| Parker and Co.    | Taylor               | S. J. Eagle, Esq.               | Prom. Bisgood                              |
| Stuart            | Alton, assignee, &c. | S. J. Russell,                  | Prom. Muples and Co.                       |
| Edwards and Co.   | Turner               | Whalley                         | Prom. Baxters                              |
| S. M. Cooper      | Austin               | S. J. Morrison                  | Prom. Collingridge & Co.                   |
| Davis             | Manwell (a pauper)   | Charrington and others          | Dt. Fry                                    |
| E. Kemp           | Waterhouse           | S. J. Cross                     | Dt. Baylis and Drew                        |
| Knuckey           | Mountford, admix.    | Wood, jun.                      | Dt. Pickering                              |
| Pickering         | Wood, jun.           | Mountford, admix., &c.          | Prom. Knuckey                              |
| Davies and Son    | Bathurst             | S. J. Harman                    | Dt. Richardson and Co.                     |
| Carlton and H.    | Pratt                | S. J. Lord Exmouth              | Prom. Wright and Co.                       |
| Draper            | Ormston              | Marten                          | Prom. Venning and Co.                      |
| W. Smith          | Colmer               | S. J. Chappell, clk., &c.       | Ca. Capron and R.                          |
| Towsey            | Slowman              | Wiggins and another             | Prom. Orchard                              |
| T. Roberts        | Nathan               | S. J. Piggott                   | Prom. Richards and W.                      |
| H. T. Roberts     | Rowlings, (a pauper) | Litchfield                      | Ca. W. H. Garry                            |
| Warneford         | The D. of Brunswick  | S. J. Slowman and others        | Tres. Edmond — Towns-<br>hend—Smith—& Cobb |
| W. Smith          | Germain              | Bishop and another, assig.      | Prom. Chas. Berkeley                       |
| J. H. Lewis       | Arliss               | Smith, clk.                     | R. A. Routh                                |
| Oliverson and Co. | Adam and another     | S. J. Freemantle, Ht., & others |  |

## Court of Exchequer.

## Middlesex.

## REMANETS FROM MICHAELMAS TERM.

|                    |                         |                             |                          |
|--------------------|-------------------------|-----------------------------|--------------------------|
| Wright and K.      | The Mayor of Rochester  | S. J. Lee                   | Issue, Wilson            |
| Everest and Co.    | and others              | White                       | Pro. Mawe                |
| Mead               | Coulson, pauper         | S. J. Branson and another   | Dt. Hill and S.          |
| E. Lewis           | Gadderer                | S. J. Haime                 | Pro. Deene and Co.       |
| Wright and K.      | Watts                   | S. J. Clarkson              | Pro. Pontifex and M.     |
| T. M. Thompson     | Ewart                   | S. J. Eagle                 | Pro. Bisgood             |
| Rhodes and L.      | Turner and others       | Brown                       | Pro. W. & E. Dyne        |
| Mayhew and Co.     | Mayhew                  | S. J. Spooner               | Ca. Wilkinson            |
| Westmacott and Co. | Long                    | S. J. Rennie, knt.          | Pro. Freshfields         |
| Lander             | Brown                   | S. J. Fitzgerald            | Pro. Shearman and S.     |
| Same               | Same                    | S. J. Spiers                | Pro. Same                |
| Same               | Same                    | S. J. Same                  | Pro. Same                |
| Bell and Co.       | Burdis (P. O.)          | S. J. Todd and another      | Pro. Hoppe and B.        |
| Willoughby and J.  | Upton                   | S. J. Burton                | Dt. Ashurst and Son      |
| J. C. Govett       | Freebody and another    | S. J. Wilkinshaw            | Pro. H. Walker           |
| R. Connyn          | Boosey                  | Purday                      | Ca. Geo. Vincent         |
| Horsley            | Gilham and others       | Arnold                      | Pro. Johnstone           |
| Stevens and G.     | Faithful                | S. J. Proctor               | Pro. Burgoynes and Co.   |
| Green              | McGregor                | S. J. Keily                 | Pro. Amory and Co.       |
| Smythe             | Morgan, jun.            | S. J. Beet                  | Tres. Gem and Co.        |
| Norris and Co.     | Smith, admix.           | S. J. London and North-West | Ca. Parker and Co.       |
|                    |                         | Railway Company             | Pro. Jones and Co.       |
| Parker and Co.     | Wright                  | Hays                        | Dt. J. Skinner           |
| Chauntler and W.   | Hoile                   | Darby                       | Ca. Few and Co.          |
| T. B. Hudson       | Redgrave                | Smith                       | Ca. Same                 |
| Same               | Redgrave and another    | Same                        | Ca. Same                 |
| Same               | A. W. Redgrave          | Same                        | Pro. Benbow              |
| S. Smith           | Lee                     | S. J. Fenn, clk.            | Ejt. Greaves             |
| E. G. Randall      | Doe d. Robertson        | Renord                      | Pro. Benbow              |
| Westmacott and Co. | Long                    | S. J. McCleane              | Pro. Gregory, F. and Co. |
| Pittendreigh & Co. | Paynter and another     | Davey                       | Pro. Clark               |
| Pinsett            | Morley and others       | Weston                      | Ca. In person            |
| A. B. Carpenter    | Lambert                 | Herrick                     | Dt. Lewis and Co.        |
| In person          | Bedford                 | Procter                     | Pro. Van Sandau and Co.  |
| Bussell            | Smith                   | Tempest                     | Pro. Buchanan            |
| Braham             | Denkin and another      | Puniall                     |                          |
| Same               | Bellamy, executrix, and |                             | Pro. Townshend and S.    |
|                    | others                  | Fitzgerald                  | Pro. Sargent             |
| Ivimey             | Simpson                 | Ridgway                     | Pro. Powsey              |
| Williams           | Grove                   | Price                       | Dt. Temple               |
| T. Wells           | Windle                  | Biggs                       | Pro. Rickards and W.     |
| Abrahams           | Goodman                 | S. J. Ld. Cecil             | Dt. Barber               |
| Wellborne          | Backs                   | Etheredge and another       | Tres. J. Lewis           |
| Gladstone          | Gaylard                 | Morris and another          | Ejt. Orchard             |
| Blake              | Doe d. Harper           | Hook                        | Dt. Pittendreigh and Co. |
| T. G. Everill      | Goslett                 | Arber                       | Dt. Wakeling             |
| S. King            | Dennett                 | Ellis                       | Covt. Campbell and W.    |
| Rickards and W.    | Sladden and another     | Jennings                    | Pro. Gresham             |
| Mayhew and Co.     | Messenger               | Toy                         | Issue, Low               |
| Smedley and R.     | Snow and another        | S. J. Riches                | Pro. Sweeting            |
| Prichard           | Florance                | Hudson                      | Pro. Lewis               |
| Jones              | Taylor                  | Leveque                     | Dt. Hope                 |
| Same               | Patient                 | Chappell                    | Ca. Monkhouse.           |
| Mill               | Magger                  | Saxton and another          |                          |

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 15, 1848.

—“Quod magis ad nos  
Pertinet, et nescire nialum est, agitamus.”

HORAT.

### THE BENCHERS OF THE INNER TEMPLE AND MR. HAYWARD.

THE circumstances connected with the refusal of the Benchers of the Inner Temple to invite Mr. Hayward to the Bench table, upon his promotion to the rank of Queen's Counsel, has again attracted public attention, in consequence of the publication of a pamphlet written by Mr. Hayward, and containing, amongst other matters, the short-hand writer's report of the argument upon appeal to the judges as visitors of the Inn. The facts of the case are by this means authentically brought before the public for the first time, and, although probably not unknown to many of our readers, may be here conveniently recapitulated.

Mr. Hayward has been a member of the Society of the Inner Temple since the year 1824, was called to the bar by that society in 1832, and in February, 1845, was nominated by patent under the Great Seal, one of her Majesty's counsel learned in the law. It has been the *almost* invariable practice of the Inns of Court to receive and admit as Benchers those barristers who are appointed Queen's Counsel; and it seems the usual course of proceeding in such cases is, for the Queen's Counsel to send his patent to the Treasurer's office, and in return he receives an invitation to the Bench table. Mr. Hayward's patent was left at the Treasurer's office of the Inner Temple, shortly before Easter Term, 1845, and on the 23rd of April, in that year, he was duly proposed for the Bench by Sir George Rose, and seconded by Sir F. Thesiger. It has been the peculiar practice of the Bench at

the Inner Temple to determine upon the reception of a new bencher by ballot, and to refuse to admit any individual against whom a single black ball appears. Mr. Hayward was black-balled upon this occasion, and has never since been admitted or received as a bencher, nor has he been officially or authoritatively informed upon what grounds he was rejected. In June, 1845, Mr. Hayward addressed the following letter to the Treasurer of the Inner Temple:—

“11, King's Bench Walk, Temple,  
June, 9, 1845.

“SIR,—It is generally understood that I have been excluded from the Bench of the Inner Temple on account of a misunderstanding with Mr. Roebuck in 1832; and I am informed that a statement has been made to members of the Bench, with a view of influencing their conduct in that capacity, to the effect that I said of Mr. Roebuck, in 1832, that he had been prosecuted for (or convicted of) circulating obscene publications (or an obscene publication): that I said this for the express purpose of injuring him at the Bath election; and that, when he called on me for an explanation, I submitted to expressions to which I ought not to have submitted as a gentleman.

“This statement is untrue in every particular. I herewith transmit a statement (which you will have the goodness to lay before the Bench) explanatory of the misunderstanding in question, and I am ready to adduce any proof that can be required in refutation of the charge.

“It might be thought presumptuous in me to suggest any course for the adoption of the Bench; but they must be aware that the exclusion of a Queen's Counsel from the customary incident of his rank operates as a se-

vere and lasting injury; and I feel confident that, professing as they do to exclude only on sufficient grounds, they will deem it a duty to investigate and reconsider a matter, which not merely affects my character and professional position and the character of a member of the Bench, but involves the best interests of the Society and the Bar.

"I have the honour to remain, Sir,

"With high respect,

"Your faithful and obedient servant,

"A. HAYWARD.

"To the Treasurer of the Honourable Society of the Inner Temple."

This letter was answered by the Treasurer, stating that he had laid it before the Bench. Mr. Hayward, after waiting until January, 1846, addressed a second letter to the Treasurer, urgently appealing to the justice of the Benchers, and requesting information as to the grounds of his non-admission, and that, if there were any charges against him, he might be heard in answer. The Treasurer replied, that he was directed by the benchers to confine his answer to an acknowledgment of Mr. Hayward's letter. Under these circumstances, Mr. Hayward appealed by petition to the judges of the courts of law, as visitors of the Inn, and the 1st June, 1846, was appointed by the judges for hearing the petition. The argument was resumed and continued on the 30th November, and adjourned to, and finally concluded on, the 2nd December, 1846. On the part of the petitioner it was contended,—1st, that the judges, as visitors of the Inns of Court, had a power, including that of supervision of the election of benchers; 2ndly, that Mr. Hayward, having received her Majesty's patent as Queen's Counsel, had an *inchoate* or *quasi inchoate* right to be received into that body; and 3rdly, that the circumstances of Mr. Hayward's case called for the judges' interposition, at least to the extent of requiring the benchers to state, if not the grounds upon which they acted, at least that they had formed a judicial determination, and had not acted on mere caprice. On the part of the benchers it was insisted,—1st, that the judges had not a visitatorial authority in respect of the refusal to admit a gentleman to the Bench of a society; and 2ndly, even if they possessed that visitatorial power over the subject-matter, that they could not exercise it in the manner required by the petitioner. The judges took time to deliberate, and on the 19th December, 1846, communicated their judgment in writing in the following terms:—

"(On the petition of A. Hayward, Esq., Q. C.

"The judges who heard this petition argued

in the exercise of their general visitatorial power, think it right to declare their unanimous opinion, that the benchers of the Inner Temple have the right to determine—first, whether they will add to their number by any new election; and secondly, which of the members of the Bar belonging to their society they will elect to call to the Bench.

"The judges, therefore, are all of opinion, that the petitioner had no inchoate right to be called to the Bench; but they all think that the mode of election, by which a single black-ball may exclude, is unreasonable; and they strongly recommend the benchers of the Inner Temple in future to conduct their elections to the Bench on some more satisfactory principle.

(Signed)

"DENMAN.

F. POLLOCK.

J. PARKE.

E. H. ALDERSON.

J. PATTESON.

T. COLTMAN.

R. M. ROLFE.

W. WIGHTMAN.

C. CRESSWALL.

W. ERLE.

T. J. PLATT."

Some circumstances of a singular character occurred during the progress of the argument before the judges at Serjeants' Inn. In the first instance, Mr. Hayward was represented by Sir Thomas Wilde, and the benchers of the Inner Temple by Sir Charles Wetherell. Sir Thomas Wilde having mentioned, in his opening statement, that Mr. Hayward had been proposed at the Bench table by Sir George Rose, and seconded by Sir F. Thesiger, Sir Charles Wetherell interposed, and declared that it was impossible this could be known, for that the benchers were "bound by the institution to preserve the secrets of the house," and not "traitorously" to disclose them. It does not appear that the view taken and so strongly expressed by Sir Charles Wetherell, as to the obligation of a Benchers not to disclose anything that occurred at the Bench table, was participated in by all the members of the Bench, for we find Sir Frederick Thesiger writing to Mr. Hayward in these terms, on the 18th June, 1846, during the same month in which Sir Charles Wetherell, representing the benchers, had described it as a species of treason to disclose what passed on the part of the Bench:—

"DEAR HAYWARD,—I remember, on your putting the question to me some time ago, I told you that the information you had received as to my seconding the proposal for your election to the Bench was perfectly correct, and I see no reason why you should not be at liberty to use the fact in any way in which it may be serviceable to you.

"Yours very sincerely,

"FREDERICK THESIGER."

During the interval between the first hearing and the adjournment of the argument, Sir Thomas Wilde was appointed Chief Justice of the Common Pleas, and Mr. Hayward was subsequently represented by Mr. Serjeant Talfourd. The lamented death of Sir Charles Wetherell took place during the same interval, and Sir Frederick Thesiger then appeared as the advocate of the benchers, and in that capacity adopted a tone which appears to have left a very painful impression on the mind of Mr. Hayward, and is pointedly alluded to by him in the pamphlet now before us. In order that we may run no risk of misrepresenting what fell on this occasion from a person so deservedly distinguished in the profession, we transcribe the portion of Sir Frederick Thesiger's address which is supposed to reflect personally on Mr. Hayward, from the printed report of the short-hand writer's notes, (pp. 103, 4, & 5).

"My Lords,—I have undertaken this duty at the desire of the society. I expressed myself on a former occasion that I *unwillingly* performed it. My Lords, that expression only alluded to my own sense of my own inability to do justice to the case, and my conviction that there were others of the society who might have been better employed in this service. I will endeavour to discharge the duty which I have undertaken with as much plainness and simplicity as possible. My Lords, when your Lordships first communicated to us a copy of the petition which had been presented by Mr. Hayward, we deliberated among ourselves as to the proper course we ought to pursue. We were satisfied that we had been pursuing a practice which had existed for a considerable number of years, and we knew that that practice had been sanctioned by persons of the highest eminence, who, during the long course of at least a century, had adorned the Bench; we knew that many of your Lordships before whom we should appear were cognizant of that practice and had taken part in it; we were satisfied that we had performed our duty, and that we should not have done so, if, upon this particular occasion, we had introduced a new practice; and therefore, we felt confident that, whatever opinions might have been entertained and expressed by others, however much we might have been censured through those channels of public information which are accessible to all *and to some peculiarly*, we felt satisfied that your Lordships at least would do us justice upon this occasion, and would not attribute to us that, in pursuing the course we had pursued, we had any improper motive, or any desire to gratify any personal feeling against the individual in whose non-admission to the Bench the pursuance of this practice has resulted.

"My Lords, we felt that we had no desire whatever to decline the jurisdiction of your

Lordships if it properly belonged to you, but at the same time that we should be sacrificing the interests which were entrusted to us, that we should be forfeiting our duty to those who are to succeed us, if we gave way to an application which is made, not that your Lordships should yourselves take upon you the authority which does not belong to you, but that it should be assumed for the purpose of this inquiry with respect to the exclusion of Mr. Hayward.

"My Lords, I am sure that appearing here as the organ of the society upon this occasion, it will not be supposed that I am actuated by any personal feeling at all towards the petitioner. You have been made aware in the course of the address of Serjeant Talfourd to you the other night, that I was one of the benchers who seconded the nomination of Mr. Hayward. My Lords, an application was made to me personally by Mr. Hayward, understanding that this had been the case, to know whether I had any objection that he should state it upon any occasion when it might be necessary.

'Mr. Hayward.—On this occasion.

"Sir Frederick Thesiger.—My Lords, I think Mr. Hayward had better not interrupt me; his case is confided to very able assistance. My Lords, I am not complaining of Mr. Hayward, if he would favour me by attending to what I was about to say: I thought it right to tell him, that upon any occasion upon which that circumstance could be of any importance to him, he was quite at liberty to make use of it. My Lords, I communicated with the members of the Bench what I had done. I thought it my duty not to keep from them the fact of the application that had been made to me and the answer which I had given, and, my Lords, I may say now that I did regret *at that period* that the result of the practice which we had conformed to in the case of Mr. Hayward did not result in the invitation of him to the Bench."

Mr. Serjeant Talfourd, in his reply, remarked upon the observations above quoted the following terms, (pp. 142 & 143, printed report):—

"I cannot help expressing my deep regret for some expressions which fell from my learned friend, Sir Frederick Thesiger, in the outset of his address to your Lordships. My learned friend honourably and openly avowed that which he had, in a manner which is consistent with his high character, given Mr. Hayward permission to introduce: that he himself had been his seconder on that occasion, when he was proposed to be elected or invited by the Bench according to their practice; and he added, that *at that period*, laying a marked emphasis upon those words which I cannot help feeling to involve in it a great deal of bitterinjustice,—he had regretted that the course adopted by the benchers had terminated in a refusal to invite Mr. Hayward to that honour which had been conferred upon other of her Majesty's counsel. I cannot help thinking that it is a bitter aggravation of the indignity



which even my learned friend, Sir Frederick Thesiger, must think was inflicted by his Bench upon Mr. Hayward at that time; that, because Mr. Hayward has thought it right to endeavour to obtain the just appreciation of the world at large by this appeal to your Lordships; because he has felt that in him the power of the Crown, and the honour conferred upon him by the Crown, have been set at nought by the benchers; because he has thought it due to his own character, to the grade in the profession to which he belongs, and to the position which he holds in society, to bring this case before your Lordships (for I believe he has done that and nothing more); that for *such* offence my honourable friend, Sir Frederick Thesiger, should think that the position in which Mr. Hayward ought to stand in his esteem has been changed by the course which Mr. Hayward has thought it his duty and felt it to be his right to adopt. I think it is a very hard thing, first, to commit that which has been done, which, whether it has been done by lawful power or not, whether it is subject to appeal or not, has made beyond all doubt a marked exception to a general rule; and then that this should be thought to deprive the sufferer of all right of complaint, or to make that complaint a crime. It is a most hard thing indeed that the victim of that example should actually be thought to have changed his position, even in the minds of those who were disposed to support him, and, above all, in the mind of a person of such high honour as my learned friend Sir Frederick Thesiger, by the efforts which he has made to avert the consequences of the injustice which has been inflicted upon him.

"There was one other expression that fell from my learned friend, Sir Frederick Thesiger, which also requires some notice at my hands. He spoke of some discussions which had taken place in public quarters in respect to the course the benchers had adopted, and with particular emphasis he spoke of those quarters which are 'open to all and particularly open to some.' Those expressions convey an insinuation not to be mistaken; on the part of Mr. Hayward I beg, and I am directed by him, most distinctly and entirely to repel it. I believe that months passed away before any notice in the public press or the public journals was taken of the proceedings; and upon his part I beg entirely to repudiate all share in any public discussion that may have ensued. If there have been in any quarter any attacks through public journals on the proceedings of the benchers, I beg on his part and he instructs me to say, that they have not proceeded from him, that he has not been able to avert or to control them, and that it is to the act which the benchers avow that those attacks are alone to be ascribed."

Sir F. Thesiger would also seem to have felt that his observations required some explanation, for we find in the appendix to the pamphlet, (No. 4, p. 163,) a letter

written by him after the judges had come to their determination, as already stated. It is as follows:—

"Bryanstone Square, Sunday,  
(Dec. 19, 1846.)

"DEAR HAYWARD,

"I owe it to myself, as well as to you, to explain the course which I have taken in your unfortunate affair, and the feelings by which I have been actuated. When you obtained your silk gown, and the period arrived for considering your call to the Bench, having known you for many years, and believing you to be in every respect entitled to admission amongst us, I willingly undertook (I believe, unsolicited) the duty of seconding your nomination. I was very much mortified at the result of the ballot, hoping to the last that it might have been favourable; and I assure you sincerely that I entirely enter into your feelings at the blighting disappointment of your hopes, and can make every allowance for the natural irritation produced upon your mind.

"I must, at the same time, candidly admit, that I thought the course you subsequently pursued a very injudicious one. I will not pretend to deny that I attributed to your influence, if not to your pen, many of the articles by which we were constantly assailed through the columns of the newspapers, but which impression, upon your positive assurance, is now removed, and regretted as having partly occasioned an alteration of my sentiments. At the time I must add, that circumstances were continually occurring to keep alive this altered feeling. At one time we were told, from various quarters, of threats which you had uttered of exposing us in the House of Commons (which, if they ever escaped you, might be excused as a hasty expression of irritation). There was the pamphlet upon the Benchers of the Inns of Court (which, I believe, is yours), which certainly was not expressed in a friendly spirit; and there was the interview which I had with you at the Athenæum on the subject of Christie's proposed motion, which contributed to increase my unfavourable impression.

"With all this upon my mind, I was called upon by the benchers to conduct their case on the death of Sir Charles Wetherell. I considered the two questions, as to whether you ought to be admitted to the Bench, and whether the judges had the power to compel us to admit you, as essentially distinct; and that it would not be inconsistent with my character as your seconder to struggle strongly against the admission of a power to impose any member upon us. Talfourd had thought it right to make a handle of my support of you as a sort of *argumentum ad hominem*, and in answering it I felt that I could not better disarm its force than by the emphatic distinction which I made between your original and your present position. What I then expressed, I sincerely felt; because, after what has occurred, I cannot think that the comfort and harmony of the Bench

would be promoted by your introduction amongst us. I do most sincerely regret this state of things. If I have any personal feelings upon the subject, they are in your favour. I consider your character as perfectly unexceptionable, as I did the moment I felt pleasure in seconding your nomination; but I could not permit the course I have pursued to be subject to misconstruction; and I have therefore endeavoured to explain to you my real sentiments, which, although they may not be perfectly satisfactory to you, will, I trust, relieve me from the charge of inconsistency, and will serve to assure you that, though temporarily annoyed at some passages of your conduct, I have the same kind disposition towards you which I had from the first, and the same regret that you should be placed in so very painful a situation.

"Believe me, dear Hayward,

"Yours very sincerely,

"FRED. THESIGER."

After an assurance that Sir F. Thesiger was mistaken as to each of his supposed causes of dissatisfaction, Mr. Hayward concludes his pamphlet as follows:—

"If petty grievances are to be treasured up in this manner, the very least the unconscious offender is entitled to, is to be informed when the cup is full. Why, when I wrote to Sir F. Thesiger to ask whether I might state on his authority that he had seconded me, was I not informed that I might mention the fact, but must no longer infer from it (or act upon the supposition) that he was my friend?

"With *all this* upon his mind (that is, with a personal feeling against me which formed an additional ground for his declining the case,) he proceeded to consider the call made upon him by the benchers. The distinction he draws between the question it was, and the question it was not, consistent with his character of seconder to support (thus admitting that this character does impose some restriction) may be logically just; but, in the first place, he did not abide by it; and, in the second place, it would not strike the majority of persons, who hear simply that a man of Sir F. Thesiger's professional eminence has, from being my supporter, become my leading opponent. The benchers who were first appointed to replace Sir Charles Wetherell, declined.

"Mr. Serjeant Talfourd's argument (ante, 93) is incorrectly described as an *argumentum ad hominem*. He was simply contending that the rejection in the first instance was not the act of the Bench, and it is no answer to say that an *ex post facto* disqualification has been created by my questioning the absolute nature of their authority. Sir F. Thesiger knew very well that the main object of my appeal was to protect my honour; and his 'comfort and harmony' doctrine might have been spared till I again became a candidate. It does not come gracefully from one who knew, when he volunteered to become my seconder, that there

was an opposition to encounter; and it is a doubtful doctrine at the best. Comfort and harmony may be desirable things in such a body, but justice and fair dealing, with the public and professional confidence inspired by them, are still more so: and even comfort and harmony are best preserved by never suffering personal feelings or private considerations of any sort to interfere with the public trusts and real purposes of the institution."

The only practical result arising from the discussion of this case and the decision of the judges thereupon, was a resolution of the Benchers of the Inner Temple, in Hilary Term, 1847, which is said to have been unanimously come to, "That in future no one shall be elected to the Bench of the Inner Temple, unless he obtain the votes of the majority of the existing Benchers, and that *four* black balls shall be sufficient to exclude." How far this resolution can be fairly considered a substantial compliance with what the judges so strongly recommended, we shall take an early opportunity of considering, and shall now only add that we fear, in whatever light it may be viewed, Mr. Hayward's case and its incidents cannot be deemed to reflect additional lustre on the benchers, or to entitle the constitution and government of the Inns of Court to increased respect from the profession or the public.

## NOTES ON EQUITY.

### PRIVILEGED COMMUNICATIONS OF A CLIENT.

DECISIONS relating to the disclosures which as well the parties in a suit, as their solicitors, are compellable to make, are of great practical importance to the profession; and we have, therefore, to call the attention of our readers to a recent decision of Vice-Chancellor Knight Bruce,\* relating to the disclosures which a *client* is compellable to make.

Upon a question of title between vendor and purchaser, it was held that the vendor was not compellable, at the instance of the purchaser, to state his motive for making a certain appointment, or to disclose confidential communications made by him to his solicitor and counsel respecting the property, although such communications were made merely on behalf of the consulting person singly, and were not made during a

\* *Pearse v. Pearse*, 1 De Gex & Smale, p. 12. These reports are in continuation of Mr. Collyer's Reports of the Decisions in Vice-Chancellor Knight Bruce's Court.

suit, during a dispute, or after the threat of a suit.

It is well known that a solicitor cannot be required to disclose the communications made to him by his client, and it seems also that the client is not compellable to disclose any confidential communication between him and his solicitor or counsel which his solicitor or counsel would be privileged in refusing to disclose.

In the course of his judgment, the Vice-Chancellor said,

"That cases laid before counsel on behalf of a client stand upon the same footing as other professional communications from the client to the counsel or solicitor, or to either of them; and that, as far as any discovery by the solicitor or counsel is concerned, the question of the existence or non-existence of any suit, claim, or dispute, is immaterial, the law providing for the client's protection in each state of circumstances, and in each equally."

*Cromack v. Heathcote*,<sup>b</sup> his honour said, was now universally acceded to, and the doctrine of this court was correctly stated by Lord Lyndhurst, in *Herring v. Cloberry*,<sup>c</sup> when he said—

"I lay down this rule with reference to this cause, that, where an attorney is employed by a client professionally to transact professional business, all the communications that pass between the client and the attorney, in the course and for the purpose of that business, are privileged communications; and that the privilege is the privilege of the client, and not of the attorney."

Whether laying or not laying stress on the observations made by the late Lord Chief Baron in *Knight v. Lord Waterford*,<sup>d</sup> the Vice-Chancellor said,

"I confess myself at a loss to perceive any substantial difference in point of reason, or principle, or convenience, between the liability of the client and that of his counsel or solicitor to disclose the client's communications made in confidence professionally to either. True, the client is or may be compellable to disclose all that, before he consulted the counsel or solicitor, he knew, believed, or had seen or heard; but the question is not, I apprehend, one as to the greater or less probabilities of more or less damage. The question is, I suppose, one of principle,—one that ought to be decided according to the rules of jurisprudence; nor is the exemption of the solicitor or counsel from compulsory discovery confined to advice given or opinions stated. It extends to facts communicated by the client. Lord Eldon has said:—"The case might easily be put, that a most

honest man, so changing his situation, might communicate a fact, appearing to him to have no connexion with the case, and yet the whole title of his former client might depend on it. Though Sir John Strange's opinion was, that an attorney might if he pleased, give evidence of his client's secrets, I take it to be clear, that no court would permit him to give such evidence, or would have any difficulty, if a solicitor, voluntarily changing his situation, was, in his new character, proceeding to communicate a material fact. A short way of preventing him would be by striking him off the roll."

Again, said the Vice-Chancellor,

"The client is certainly exempted from liability to discover communications between himself and his counsel or solicitor, after litigation commenced, or after the commencement of a dispute ending in litigation; at least, if they relate to the dispute or matter in dispute. Upon this I need scarcely refer to a class of authorities to which *Hughes v. Bidolph*,<sup>e</sup> *Nias v. Northern and Eastern Railway Company*,<sup>f</sup> before the present Lord Chancellor in his former chancellorship, and *Holmes v. Baddeley*,<sup>g</sup> decided by Lord Lyndhurst, belong.

"But what, for the purpose of discovery, is the distinction in point of reason, or principle, or justice, or convenience, between such communications and those which differ from them only in this, that they precede instead of following the actual arising, not of a cause for dispute, but of a dispute, I have never been able to perceive."

The Vice-Chancellor further said:

"A man is in possession of an estate as owner, he is not under any fiduciary obligation, he finds a flaw in his title, which it is not, in point of law or equity, his duty to disclose to any person; he believes that the flaw or supposed defect is not known to the only person who, if it is a defect, is entitled to take advantage of it, but that this person may probably or possibly soon hear of it, and then institute a suit or make a claim. Under this apprehension he consults a solicitor, and through the solicitor lays a case before counsel on the subject, and receives his opinion. Some time afterwards the apprehended adversary becomes an actual adversary, for coming to the knowledge of the defect or supposed flaw in the title, he makes a claim, and, after a preliminary correspondence, commences a suit in equity to enforce it; but between the commencement of the correspondence and the actual institution of the suit, the man in possession again consults a solicitor, and through him again lays a case before counsel. According to the respondent's argument before me on this occasion, the defendant, in the instance that I have supposed, is as clearly bound to disclose the first consultation and the first case, as he is

<sup>b</sup> 2 Brod. and Bing. 4. <sup>c</sup> 1 Phill. 91.

<sup>d</sup> 2 Y. & C. 40, 41. <sup>e</sup> 19 Ves. 267.

<sup>f</sup> 4 Russ. 190.

<sup>g</sup> 3 Myl. & Ch. 355.

<sup>h</sup> 1 Phill. 476.

clearly exempted from discovering the second consultation and the second case. I have, I repeat, yet to learn that such a distinction has any foundation in reason or convenience."

The discovery, and vindication, and establishment of truth, are main purposes certainly of the existence of courts of justice :

"Still (said his Honour,) the obtaining of those objects, which however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly, or gained by unfair means, not every channel is or ought to be open to them. The practical inefficiency of torture is not, I suppose, the most weighty objection to that mode of examination, nor probably would the purpose of the mere disclosure of truth have been otherwise than advanced by a refusal on the part of the Lord Chancellor in 1815 to act against the solicitor, who, in the cause between Lord *Cholmondeley* and Lord *Clinton*, had acted or proposed to act, in the manner which Lord *Eldon* thought it right to prohibit. Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much. And surely the meanness and the mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusing reserve, and dissimulation, uneasiness, and suspicion and fear into those communications which must take place, and which unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself."

## RIGHT TO RECOVER ON A LOST BILL OF EXCHANGE.

A QUESTION was discussed and determined in a case very recently reported,\* which has probably on some occasion engaged the attention of almost every professional man with clients engaged in trade or commerce, viz., whether the payee of a bill of exchange who loses the instrument before it comes to maturity, and is therefore unable to produce it, is entitled to recover against the acceptor? In the case referred to the point arose upon the pleadings. The plaintiff sued as the drawer of a bill payable to his own order, and accepted by the defendant. The defendant pleaded, that after acceptance and before action, the plaintiff lost the bill, that it remained lost, and that the plaintiff was not, at the time the suit

commenced or the plea was pleaded, the holder or possessed of the bill. The plaintiff, by his replication, admitted the facts stated in the plea, but added that he was the holder of the bill until the loss; that the bill was not indorsed by him, or transferable by delivery, or capable of being put in suit or enforced by any other person than the plaintiff; and that the defendant had notice of the premises before and at the commencement of the suit. To this replication the defendant demurred, and the substantial question argued was, whether, upon the facts stated in the pleadings, the plaintiff was entitled to recover?

The plaintiff's counsel submitted, that the general rule, founded on the custom of merchants, was, that the holder of a bill should present the instrument at its maturity to the acceptor, demand the amount, and, upon receipt of the money, deliver up the bill; but that to one who should refuse or be unable to produce the bill, the acceptor is not bound to pay the amount, for that he is entitled upon such payment to the possession of the instrument for his own security, as a voucher and discharge in account with the drawer. The authority chiefly relied upon in support of this view was a case of *Hansard v. Robinson*,<sup>b</sup> in which the late Lord *Tenterden* is reported to have laid it down, "that if, upon an offer of payment, the holder should refuse to deliver up the bill, the acceptor might retract his offer or retain his money;" for that the holder had no right by his own negligence or misfortune to cast a burthen on the acceptor by compelling him to pay a bill which the former could not give up. The plaintiff's counsel admitted the general rule of law to be as laid down by Lord *Tenterden* in the case cited, but contended that cases were excepted from its operation in which the plaintiff's inability to deliver up the bill resulted from his having lost it whilst it remained payable to his own order and was not indorsed. The authority chiefly relied upon in support of this proposition was the case of *Rolt v. Watson*,<sup>c</sup> where it was held by the Common Pleas, that the acceptance of a lost bill not indorsed was not a defence to an action for the price of goods, for which the bill had been accepted.

The court, after taking time to consider its judgment, was of opinion that the decision in *Hansard v. Robinson*, in which all the previous cases were brought under the consideration of the Court of King's Bench,

\* *Ramuz v. Crowe*, 1 Exch. R. 167. It may be observed that the Exchequer Reports are a new series in continuation of Meeson and Welsby's Reports.

<sup>b</sup> 7 B. & Cres. 90.

<sup>c</sup> 4 Bing. 273.

governed the present case. That case overruled those supporting the exception now contended for by the plaintiff's counsel, and established the rule that, by the custom of merchants, the acceptor of a negotiable bill was not bound to pay, unless the party demanding payment produced and offered to deliver up the instrument itself. This court now considered the rule as laid down in *Hansard v. Robinson* was correct, and as the bill accepted by the defendant was negotiable, and the plaintiff by reason of his loss of it was unable to produce it to the defendant, the court held, that the defendant could not by the law of merchants be compelled to pay the amount. Upon these grounds, judgment was entered for the defendant on the demurrer.

Two of the three courts of law having pronounced concurrent judgments on this question, it may now be considered as settled, and the obligation on a party who has lost a bill to give the acceptor who is willing to pay the amount a satisfactory indemnity against being called upon to pay the lost bill a second time, is established beyond doubt. The question, however, remains, whether upon the tender or offer of an indemnity which a reasonable man would consider satisfactory, the acceptor can be compelled by *any* form of proceeding to pay the amount of a bill which the party demanding payment cannot produce? The importance of this question is evident, and it will be surprising if the extensive use of negotiable instruments does not soon suggest the necessity of having it answered by some of our legal tribunals.

### ANNUAL REPORT OF COMMISSIONERS IN LUNACY.

(PURSUANT TO THE ACT 8 & 9 VICT. C. 100, s. 88.)

Ordered, by the House of Commons, to be Printed, 15th December, 1847.

To the Right Honourable the Lord Chancellor, &c. &c. &c.

30th June, 1847.

THE Commissioners in Lunacy have the honour to submit to the Lord Chancellor, pursuant to the 88th section of the Act 8 & 9 Vict. c. 100, the annexed statement, containing a list of the various county asylums, hospitals and licensed houses receiving lunatics in England and Wales, together with the number of insane patients resident therein at the visit of the commissioners.

On making their last Annual Report to the Lord Chancellor, on the 30th June, 1846, the

commissioners intimated an intention, as soon as practicable after the first year of their labours should have terminated, and they should have obtained ampler materials, to make a more minute report of all such matters coming under their cognizance as they should consider worthy of especial notice.

Many circumstances beyond the control of the commissioners conspired to prevent their making this further or minute report as early as they had contemplated. They were desirous that it should include all material facts relating to the existing state of lunacy and lunatic asylums; and for this purpose they had to seek and await information on several points from various parties. Amongst other things, they endeavoured to obtain accurate returns from all the unions and parishes in the kingdom, of the number of their lunatic poor. These numbers, which had previously been in some degree the subject of estimate only, the commissioners have now obtained; but the endeavour to obtain them involved an extensive and most protracted correspondence with the officers of all the various unions and parishes, from whom alone the information could be derived.

The commissioners were also desirous of ascertaining the medical treatment now in use in all the principal receptacles for lunatics in England, in order that the same might be made public, for the benefit of all persons interested in the alleviation of insanity.

To obtain this information, it was necessary to issue various questions to the several superintendents and medical officers of all those establishments, and to await their answers, some of which have been only recently, although all were eventually freely given; and these answers now form, as the commissioners are disposed to think, a valuable body of information on the subject to which they relate.

Other circumstances were from time to time occurring, and facts of various kinds were made known; all which the commissioners wished to embrace in their report, either because they were, apart from the general subject, intrinsically important, or because they tended to illustrate or render more accurate the statements or computations which they thought it expedient to enter into. The whole information thus obtained is now embodied in the "Further Report," very recently submitted to your lordship by the commissioners, and as that report carries down the state of lunacy and lunatic establishments almost to the present time, it appears to the commissioners necessary merely to refer to it on the present occasion, as containing all the facts which they should otherwise have thought it their duty to bring before your notice in this (their Second Annual) Report.

On behalf of the Commissioners,  
(Signed) ASHLEY, Chairman.

REPORT to the Lord Chancellor, under the 8 & 9 Vict. c. 100, s. 88, of the number of Visits Made, the number of Patients Seen,

and the number of Miles Travelled by the several Commissioners in Lunacy, during the six months ending on the 4th of August, 1847.

|                       | Visits Made. | Patients Seen. | Miles Travelled. |
|-----------------------|--------------|----------------|------------------|
| Dr. Turner . . .      | 167          | 8,270          | 3,677            |
| Dr. J. R. Hume . .    | 107          | 2,079          | 3,288            |
| Dr. J. C. Prichard .  | 122          | 6,723          | 3,152            |
| B. W. Procter, Esq. . | 93           | 8,267          | 3,265            |
| J. W. Myles, Esq. .   | 139          | 3,319          | 4,481            |
| W. G. Campbell, Esq.  | 165          | 9,939          | 2,798            |

R. W. S. LUTWIDGE, *Secretary*.

[The List of Lunatic Asylums, &c., is omitted as unnecessary and of great length.]

## VISITS TO THE OLD LAWYERS.

### THE LATE MR. TIDD'S PUPILS.

We have been favoured with the perusal of some curious statements regarding the pupils of the venerable Mr. Tidd, which show the great esteem in which he was held by the profession. The late and present Lord Chancellor, the Lord Chief Justice of England, and a recent Lord Chancellor of Ireland, with several learned judges, will be found in the illustrious roll.

In 1785, the well-known "Sam. Marryat" entered as a pupil, and continued a year. Here he laid the foundation for those "Causes which produce Effects," indulging his taste for law books, and eschewing all others.

In 1786, Mr. Reader entered and continued his studies for two years, preparatory to that large practice as a junior which he afterwards attained.

In 1789, we find the name of Samuel Comyn, who prolonged his stay for five years, and doubtless prepared the materials for the useful works which he afterwards compiled.

In 1792, Randall Jackson, well known for many years in East India business, studied for a year.

In 1794, the name of William Elias (afterwards Mr. Justice) Taunton occurs: he remained two years.

During the same year we notice the celebrated Mr. (afterwards Sir James) Mackintosh. A year was all he could spare to special pleading.

In 1796, we find the name of Joseph Chitty, who studied for two years, and prepared himself to rival his master in the number of his pupils, and still more in the number of his legal works.

From the memoranda of 1797 we extract the names of two learned serjeants, viz., Robert Henry Peckwell and Edward Vitruvius Lawes. The former continued three, and the latter no less than five years. Both of these dignitaries were distinguished for their solid attainments.

Next came, in Nov. 1797, John Singleton Copley, and devoted a year to special pleading. His splendid course as an advocate, a judge, and thrice Lord Chancellor, history will record.

In June, 1801, we select the present Lord High Chancellor, Charles Christopher Pepys. He remained for two years with Mr. Tidd.

Then came, in Easter Term, 1802, the distinguished Chief of the Queen's Bench, Thomas Denman.

And in January, 1804, "plain" John Campbell, who pursued his learned course for three years.

In 1805, we find the names of Henry William Tancred and John James Wilkinson, each of whom remained two years. To the latter we are indebted for many valuable works. For the *Opera* of the other learned gentleman we refer to Sir G. Rose.

In April, 1806, came Mr. (afterwards Justice) Coltman, who devoted two years to chamber practice.

In 1807, we notice Mr. (now Commissioner) Shepherd.

In 1809, Mr. (afterwards Commissioner) Law, who continued three years.

In 1810, Oct. 27, Thomas Joshua Platt, now Mr. Baron Platt, commenced his legal studies, and remained with his venerable preceptor two years.

## HILARY TERM EXAMINATION.

The Examiners have appointed Monday, the 24th inst., at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to proceed on the examination which will commence at 10 o'clock precisely.

The articles of clerkship and assignments, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the Secretary, on or before Tuesday the 18th instant.

Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the heads of inquiry,—*Common Law and Equity* being two thereof.

## APPLICATIONS FOR ADMISSION AS ATTORNEYS,\*

*in Hilary Term, pursuant to Judges' Orders.***Queen's Bench.***Clerks' Names and Addresses.**To whom articulated or assigned.*

|  |  |
|--|--|
| Burridge, Arthur, Albert Terrace, Yeovil and Bradford . . . . .  | Thomas Lyon, Yeovil  |
| Byam, Joseph Davies, Bristol . . . . .   | I. B. Grindon, Bristol   |
| Clabon, Edward, 76, Mark Lane . . . . .  | I. M. Clabon, West Malling   |
| Campbell, William Knight, Birmingham; and Craig's Court . . . . .  | John Wadsworth, Nottingham   |
| Husband, Sydney Otway, East Moulsey; Wem; Lower Calthorpe Street; Mitre Court Chambers; and Brompton . . . . . | T. D. Browne, Wem  |
| Shoen, William, 137, Cheapside . . . . .   | Henry Ashurst, Cheapside   |
| Walker, William, 15, Ranelagh Grove, Pimlico . . . . .   | William Bartholomew, Gray's-Inn Place; R. H. Witty, Essex Street; Edward Strick, Doughty Street. |

*On the last Day of Hilary Term, pursuant to Judges' Order.*

|  |  |
|--|--|
| Briggs, Frederick, 93, Kennington Street, Beresford Street, Surrey . . . . . | William F. Low, Wimpole Street; M. Shearman, John Street, Adelphi. |
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## APPLICATIONS FOR TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

*Last day of Hilary Term, 1848.***Queen's Bench.**

|   |   |
|---|---|
| Browne, John Holt, Hey House, near Bury, and Bolton-le-Moors . . . . .                  | Creswell, Joseph, Belvidere Road, Lambeth; and Folkestone                                       |
| Brown, Edward Cromwell, East Retford . . . . .  | Down, James Dundas, 14, York Place, City Road; and Southampton                                  |
| Cutten, Charles Edward, Borough Road, Southwark . . . . .                               | Edwards, James, Totness; and Riverford  |
| Gwillim, James Sheward, Marlborough . . . . .   | Everingham, Henry, the Younger, 39, University street; and Devizes                              |
| Hodgetts, Thomas, 2, Charles Cottage, Old Kent Road, Surrey . . . . .                   | Falkner, John Stringer, 13, Camden Terrace, Camden Town; Bernard Street; and Upper Gower Street |
| Hardy, Edward Webb, 13, Dean Street, Westminster; and 219 and 4, High Holborn . . . . . | Fiske, Edward Brown, Beccles  |
| Jones, John, Liverpool . . . . .  | Grylls, Humphry Millett, Helston  |
| Johnson, John Fortin, 9, Brook Street, Lambeth; and Walcot Square . . . . .             | Hick, John Geo, 4, Wharton St., Lloyd Sqr. Hall, Henry Wait, Bristol; and Barnes                |
| Lane, Theophilus, Hereford . . . . .  | Heming, William Waters, Banbury; and 45, Spencer Street   |
| Mather, John, Manchester; and Liverpool . . . . .                                       | Hall, Isaac, 10, Lancaster Place; Manchester Buildings; and Manchester                          |
| Smedley, John Benjamin, 34, Charles Street, City Road; and Harpur Street . . . . .      | Herring, Philip, 11, Park Place, Westminster; 9, Norfolk Rd; and Queen's Bench Prison           |
| Smith, Joseph, 14, Globe Road, Mile End Road; Bury Street; and Gravesend . . . . .      | Jackson, George, South Shields; and Rodney Buildings, New Kent Road                             |
| Tench, James, Dudley . . . . .  | King, William, 34, Stockwell Park Road; and Park Crescent, Stockwell                            |

*To a Judge at Chambers, on the 1st day of February, 1848.*

|  |   |
|--|---|
| Attwood, Richard, Fareham . . . . .  | Monckton, Wm. Chas., 33, Norfolk St., Strand                              |
| Bouts, Charles, 9, Rodney Buildings, Old Kent Road; and Winchester . . . . . | Mills, Austen Telfry, 51, Southampton Row                                 |
| Brooks, John, 39, Great James Street, Bedford Row . . . . .                  | Moss, James, Liverpool  |
| Bell, Richard, 3, Park place, Loughborough Road, Brixton . . . . .           | Moreton, Samuel Holland, Liverpool  |
| Carter, Fredk. Roger, Exeter; and Heavitree . . . . .                        | Michael, James Lionel, 9, Red Lion Square                                 |
| Chivers, Charles Trigg, Cromer Street . . . . .                              | Mallam, Charles, 1, Staple Inn; Wellington Street, North; and 344, Strand |
| Cooper, William, 17, Howland Street, Fitzroy Square . . . . .                | Maskell, John, 27, Artillery Street                                       |
|  | Parrott, William, 10, Staple Inn  |
|  | Postlethwaite, Thomas, Ulverston  |
|  | Plumbe, James Stuart, Liverpool   |
|  | Sharp, James, Southampton   |
|  | Shattock, John, Lower Kennington Lane; and South Street, West Square      |
|  | Sparling, Philip Smith, Colchester  |
|  | Turner, Joseph, Sheffield   |

\* The List of Admissions for Easter Term will be given in an early Number.



Turner, Francis, Kirby Moorside  
 Turner, William Rawson, 50, Canterbury  
 Street, York Road  
 Turner, William Nicholas Harwin, the City  
 of Norwich, Norfolk  
 Wing, William, 4, New Millman Street  
 Walker, Robert Greaves, Hewart, York  
 Walker, Thomas Fuller, Tonbridge  
 Whitaker, E. Eugene, 12, Lincoln's-Inn-Fields

## NOTES OF THE WEEK.

### THE LORD CHANCELLOR.

Our readers are for the most part aware that the Lord Chancellor resumed his seat in the Court of Chancery on the first day of Term, and disposed of the business before him with all his accustomed ability and learning. The "rumours that filled the air" during the last Term and Vacation are now dispelled, and the business of the court will proceed in its wonted channel. We hope soon to place before our readers the judgments in the various cases which stood over for decision by his lordship.

### IRISH COURT OF CHANCERY.

The Commissioners are Barons Lefroy, Pennefather, and Richards; Judges Jackson, (Common Pleas,) and Moore, (Queen's Bench); Masters Henn and Brooke.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

*Bennett v. Cooper.* Dec. 8, 1847.

#### RECEIVER.—MORTGAGEE.—MASTER.

*A mortgagee is not entitled to a receiver in a suit in which the defence is an account by which the debt has been paid off, merely because he succeeds in establishing before the Master his interest in the mortgage and the receipt of the rents of the mortgaged property by the defendant.*

In this case Mr. Bagshawe moved for the appointment of a receiver, in consequence of the proceedings in the Master's office. The bill was brought to obtain arrears of interest upon a mortgage for 1,500*l.* amounting to another sum of 1,500*l.*, and the proceedings upon which the receiver was asked for, were the proof given on the plaintiff's part of his interest in this mortgage, and of this amount of arrears, and the admission by the defendant of the receipt by him for the last 20 years, of the rents of the mortgaged premises, consisting of two sums of 29*l.* and 8*l.*

Mr. Kindersley and Mr. Lewin, contra, contended, that nothing had taken place now to induce the court to do now what it had refused to do at the hearing, namely, to appoint a receiver before the accounts were taken completely. The receipt of the sums in question was admitted by the answer in the same way in which it had been in the Master's office; the

### TAXES ON JUSTICE.

A VERY valuable and voluminous parliamentary return has just been printed, moved by Mr. Warburton, in July last, at the instance of Mr. John Romilly, the chairman of the renewed Committee on the Fees of Courts of Law and Equity. It comprises not only the amount of the fees, but by whom received, and their application, including the sums taken on account of the consolidated fund, and such as are retained for the officers' own use. We shall take an early opportunity of stating the result of the enormous taxation thus levied:—coming first out of the pockets of attorneys and solicitors, and finally of the unfortunate suitors, or such of them as are able to pay.

### HILARY TERM EXAMINATION.

The number of persons included in the printed list for admission as attorneys, with the special orders granted by the judges, dispensing with full notice, amounts to 221, from which are to be deducted the candidates already examined, and such as have given duplicate notices, making no less than 77, and thus leaving 144 entitled now to be examined. Doubtless this number will be finally reduced to 100 or thereabouts.

defence which alleged, that there was nothing due on the account, had not been gone into.

Lord Langdale said, that it appeared to him that nothing more had been done than was done at the hearing. There was no allegation of the property being in danger. The case was not at all like that of an executor admitting money to be due from him. How could he, when one branch of the inquiry only had been gone into, make an order as if the result were in the plaintiff's favour.

*Thomas v. Davies.* Dec. 8, 1847.

#### RECEIVER.—MORTGAGE.

*A receiver of mortgaged property appointed, pending the account under a decree of foreclosure, on the application of the personal representatives of the mortgagee, where the heir refused to take possession; the appointment being no more than what the heir might have done.*

In this suit, which was for an account and foreclosure, the personal representatives of a mortgagee moved after the decree for a receiver of the mortgaged property, alleging that the heir of the mortgagee refused to take possession.

Mr. Turner and Mr. Emsley for the motion.

Mr. Welford, for parties claiming under the mortgagor, opposed the application on the ground that the appointment of a receiver might interfere with the equity of redemption reserved by the decree; but



Lord Langdale made the order, observing that he did no more than the heir of the mortgagee might do if he chose to exercise his legal right.

*Duval v. Mount.* Dec. 8, 1847.

**PAYMENT INTO COURT.—PROPERTY TAX.**

*Payments made by the purchaser of property sold under the decree of the court for property tax cannot be deducted on the payment of the purchase money into court.*

In this case a question was raised, whether in paying his purchase-money into court the purchaser was entitled to deduct property-tax paid by him. As an argument in favour of the exemption it was urged, that the allowance would be made on a contract of purchase not made with the court, if, as was the case here, interest was payable on the purchase-money, and that here the contract had in fact been made privately, though subsequently approved of by the court.

On the other side reference was made to *Dawson v. Dawson*, 11 Jur. 984.

Lord Langdale said, that it appeared there was a rule of practice established in the case, and that if the vendor asked to have his money out of court the purchaser would have the opportunity of claiming the sums paid by him. Ordered that the money be brought into court, not to be paid out without notice to the purchasers.

**Vice-Chancellor of England.**

*In re Forshaw.* Dec. 20, 1847.

**SOLICITOR.—LIEN ON DEEDS AND PAPERS.  
—BILL OF COSTS.**

*F. and R., attorneys in partnership, are employed by C., who becomes indebted to them; another partner joins the firm, and in respect of work done by the three, a bill of costs is incurred, and certain papers belonging to C. come into their possession. Held, that the firm of three had no lien upon the papers so as to enable them to retain them in respect of the bill of costs due from C. to the former firm.*

THIS was a petition by Charles Turner, the official assignee of H: Cole, a bankrupt, for the delivery up by the respondents H. Forshaw and J. Forshaw, solicitors, of certain deeds and papers on which they claimed a lien for costs. H. Forshaw entered into partnership with R. Blundell in Jan., 1840, and they carried on business as solicitors until the 1st of Nov., 1843, when J. Forshaw joined the firm, and the business was then carried on under the name of Forshaw, Blundell, and Forshaw, until Jan., 1847, when R. Blundell retired. Prior to Nov., 1843, the firm of Forshaw and Blundell transacted business for H. Cole; and in Jan., 1847, the firm of Forshaw, Blundell, and Forshaw delivered to him their bill of fees and disbursements incurred in such business, amounting to 556*l.* 16*s.* 8*d.*, retaining in their

hands certain deeds, documents, and papers which had come into their possession since the 1st of Nov., 1843. Cole did not pay this bill, but on the 30th Jan., 1847, became a bankrupt, and petitioner was appointed his official assignee, who thereupon applied to Messrs. Forshaw and Forshaw for the deeds and papers in their possession belonging to the bankrupt. They then delivered a further bill of costs amounting to 43*l.*, which Cole had incurred since Nov., 1843, which the assignee offered to pay upon the papers being delivered up. This Messrs. Forshaw refused to do until both the bills of 43*l.* and 556*l.* 16*s.* 8*d.* were paid, claiming a general lien upon the papers on behalf of the three several firms of Forshaw and Blundell; Forshaw, Blundell, and Forshaw, and Forshaw and Forshaw.

Mr. Bethell and Mr. J. Adams for the petition, contended, that as the papers sought to be delivered up related to matters transacted by the firm of Forshaw, Blundell, and Forshaw, and were never in the possession of the firm of Forshaw and Blundell, the latter firm could claim no lien upon them whatever: citing *ex parte Horsfull*, 7 Barn. & Cres. 528; *ex parte Houldsworth*, 4 Bing. N. C. 386; *In re Ford*, Leg. Obs. vol. 34, p. 277.

Mr. Bacon and Mr. Dickinson, contra, contended, that Messrs. Forshaw and Blundell, the first two partners, clearly had a lien on the papers which came into their possession after the third partner joined them, and the mere fact of a third partner so joining could not destroy that lien—and although the lien on the papers which the three might have should be satisfied, still the lien of the two on the same papers continued. *Gregory v. Cresswell*, 14 Law Jour. N. S., p. 300; *Ex parte Stirling*, 16 Ves. 215.

The Vice-Chancellor, without hearing the reply, said, the case was very different from that of *Gregory v. Cresswell*, because there, although there was a change of partnership, the right was continued from one partnership to another; but suppose in the present case the partnership of the three had a lien on the papers, and two of the partners who claimed the original lien on them died, then the possession would go to the survivor of the three, but how could the survivor claim a lien upon the papers for a debt in which he had no interest. It appeared to him that in respect of those papers which came into the possession of the partnership of the three *de novo*, the two had no lien for the debt incurred by those two.

**Queen's Bench.**

(Before the Four Judges.)

*Penniall v. Harborne.* Hilary Term, 1848.

**LEASE.—COVENANT TO INSURE.—FORFEITURE.—ACTION TO RECOVER DEPOSIT.**

*A lessee covenanted to insure the demised premises in the names of the lessors, and in default of so doing, the lessors to have power of re-entry. Two months after the execution of the lease a policy of insurance*

was effected in the names of the lessors and the lessee.

Held, that the insurance was not effected within a reasonable time after the execution of the lease, and that a policy effected in the names of the lessors and the lessee was not a compliance with the terms of the covenant in the lease; and, the lessee not being able to make out a good title to the premises, that the vendee of the lease might recover back a sum of money paid by way of deposit for the purchase.

THIS was an action of assumpsit, brought to recover the sum of 50*l.*, being the deposit made by the plaintiff for the purchase of a leasehold property. In April, 1845, a lease of a house and some cottages was granted to the defendant, in which the defendant covenanted to insure in the names of the lessors the demised premises in a certain sum, in a particular office specified, or if that should be discontinued, in some insurance office to be approved of by the parties, or in default of so doing, the lessors to have power of re-entry. From April, when the lease was granted, till June, 1845, the cottages and house were insured in the joint names of the lessors and the tenant. After the insurance had been effected rent had been paid to the agent of the lessors, but it did not appear that he knew at that time of the manner in which the insurance had been effected. The case was tried before Lord Denman, C. J., in London, who directed the jury to find a verdict for the plaintiff. A rule nisi, pursuant to leave reserved, was obtained to set aside the verdict and enter a nonsuit.

Mr. Martin and Mr. Voules showed cause. The plaintiff is entitled to retain the verdict for the deposit, on the ground that the defendant was not in a situation to make out a good title to the premises. The defendant had failed to comply with the terms of the covenant in the lease, and there was a period during which the lessors might have brought ejectment, because the cottages were not insured in any office. Afterwards the cottages were insured, not according to the terms of the covenant in the names of the lessors, but in their names and that of the tenant. This also amounts to a forfeiture of the lease, because the object of the covenant was to give the lessors alone the right to sue on the policy. *Doe dem. Muston v. Gladwin.*\*

Mr. Knowles and Mr. Miller, contra.

The covenant in the lease does not say within what time the policy of insurance is to be effected. In *Doe dem. Muston v. Gladwin*,<sup>b</sup> the action was brought by the lessor against the lessee, but this being an action by the vendee to recover the deposit, the rights of the lessors only come indirectly in question.

The words of the covenant are, that the insurance shall be in the joint names of the lessors, but not in their names alone; there is

no breach of the covenant because the insurance is effected in the names of the lessors and another person. The statute 14 Geo. 3, c. 78, s. 83, provides how money insured on houses burnt shall be applied, and the tenant, by having his name inserted in the policy, takes no more interest than the statute gives him.

Lord Denman, C. J. I think there is no distinction in principle between the facts of this case and those of the case cited, where, an action of ejectment was brought by the landlord against the tenant for a forfeiture; for if the tenant attempts to sell his interest in the premises, he must show that he has the power to make out a good title. There are two objections made to the manner in which the lessee has complied with the covenant to insure. For a period of nearly two months after the execution of the lease, no insurance was effected on the cottages which formed part of the demised premises. Again, the insurance is effected in the names of the three lessors and the lessee, which is not in compliance with the terms of a particular contract which required the policy to be effected in the names of the three lessors. The statute 14 Geo. 3, c. 78, does not appear to me to have any application to this subject, because the 83rd section provides, that any person who has an interest in the premises may apply to have the benefit of the provisions of that statute.

Patteson, J. I think this rule ought to be discharged, because the defendant fails to make out a good title to the premises, on the ground that it was in the power of the lessors to enforce the forfeiture. It is said that as between vendor and vendee the same reasons do not apply as between landlord and tenant, but I do not think that any such distinction exists; at all events, it is clear in this case that the defendant has not that which he professes to convey. If there was any doubt whether the policy of insurance had been effected within a reasonable time after the execution of the lease, the court might have sent the case down for a fresh trial; but I think there would be no use in so doing, since the court is of opinion that an express covenant to insure in the names of the three lessors is not complied with by an insurance in the names of the three lessors and the name of another person. The introduction of the third name might easily introduce great difficulty in case it became necessary to bring an action on the policy. I think the statute 14 Geo. 3 does not apply in this case for the reasons that have already been given.

Coleridge, J. I am of the same opinion on both points. I think this rule must be discharged, if the defendant had no interest in the premises which he could convey, and he clearly had not that power if there had been a forfeiture. From April to June 1845 the cottages were not insured at all. If the insurance had been effected within a few days after the execution of the lease, it might be said that it was effected within a reasonable time, but I think the omis-

\* 6 Q. B. R. 953.

<sup>b</sup> Ibid.

sion to insure for two months cannot be called a reasonable delay. On the other point I think there has not been a compliance with the covenant to insure in the names of the lessors. There might be a specific object in requiring that in case of fire the money should be paid into the hands of the lessors, and if the name of the lessee was included, and the money was paid to him there might be great difficulty in getting it back again.

*Wightman*, J. concurred. Rule discharged.

### Queen's Bench Practice Court.

#### SEQUESTRATION.—INTEREST ON JUDGMENT.

*Watkins v. Tarply*, clerk. Michaelmas Term, Nov. 25, 1847.

*A plaintiff having obtained judgment against a beneficed clergyman in 1834, issued a sequestration to the bishop of his diocese to sequester the profits of his living. In the year 1838, an act was passed (1 & 2 Vict., c. 110, s. 17,) which gave judgment-creditors a right to four per cent. interest on judgments obtained by them from the time of the act coming into operation, as to judgments entered up before the act, and as to those entered up after, from the time of so entering it up. In December, 1839, another writ of sequestration was lodged with the bishop against the profits of the living at the suit of other parties. A motion being made by the first sequestrator that the writ of sequestrari facias should be handed over to him to enable him to indorse the amount of interest from 1838 thereon, the court refused to make such an order.*

THIS was a rule calling upon the Bishop of Peterborough to show cause why he should not make a return of the sums that he had levied under the writ of sequestration issued in this action, and what he claims to deduct for the costs and charges attending the levy, and also calling on the bishop and the defendant to show cause why the said writ of sequestration should not be handed back to the plaintiff, in order that a farther indorsement may be made thereon of the interest due on the judgment under 1 & 2 Vict., c. 110.

In this case, it appeared that in the year 1834 the plaintiff obtained judgment against the defendant, who is a beneficed clergyman, upon this judgment a writ of *sequestrari facias*, issued to the Bishop of Peterborough to sequester the profits of the defendant's living, which had been done from time to time, but the judgment was not yet entirely satisfied.

In the year 1838 the statute 1 & 2 Vict., c. 110, was passed, which came into operation in the October of the same year; by the 17th section of this act it is enacted, "That every judgment-debt shall carry interest at the rate of four per centum per annum from the time

of entering up judgment, or from the time of the commencement of this act, in cases of judgments then entered up, and carrying interest until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment." Another sequestration, issued in December, 1839, at the suit of another creditor of the defendant, which still remains in force and unsatisfied.\*

*Bovill* now showed cause on the part of the bishop, and contended that the bishop ought not to have been called on to show cause, but merely the parties that were interested; with regard to the object of the rule, it was very unfair towards the other creditor, if made absolute, as it would enable the plaintiff to levy the amount of eleven years' interest on his judgment, and so postpone the claim of the other creditor: if indeed there had been no other writ of *sequestrari facias* in force, the matter would have been different.

*Aspinall*.—I appear to show cause on the part of the defendant, and I object to the second part of this rule being made absolute on the ground that if the endorsement be made, the effect will be to postpone the liquidation of the defendant's debts, in which he is interested; besides, if indeed the plaintiff is entitled to the amount he seeks to claim by this endorsement, he may equally obtain it without any endorsement at all; and so the court will not interfere, but leave him to enforce his claim as he best may.

*Phipson*, in support of the rule, admitted that the effect of making the rule absolute, would be to postpone the other creditor, but contended that the language of 1 & 2 Vic. cap. 110, clearly showed that it was the intention of the legislature to confer a right to plaintiffs situated as the present plaintiff is, to interest on their judgments from the time of that act coming into operation, and if so, the proper course to be taken, was that adopted in the present case.

*Erle*, J.—I feel it my duty not to grant this application, since the endorsement would have the effect of increasing the amount of the plaintiff's claim, and therefore be extremely prejudicial to the other creditors. It would be extra-judicial to pronounce an opinion whether or not the bishop has at present any authority to levy the amount of interest; but I think that to make the endorsement sought, would be, in effect, to issue a new writ; and I think if I were to do that, I should be doing injustice to the other creditors of the defendant, as the satisfaction of their debts would be considerably postponed. I have the less scruple as to refusing this application, because I find that when 1 & 2 Vict. c. 110, passed, there was no other sequestration against the defendant's living in existence, nor was there for a considerable time afterwards; so that the plaintiff might then have issued a new writ endorsed for the interest. I must therefore leave the plaintiff to get his interest in any way he may be advised he can. With regard to the first part of the rule, there is no objection to

that, therefore that branch of the rule will be absolute.

Rule absolute as to the first branch, and discharged as to the last.

### Common Pleas.

(City of London.)

*Toms, appellant, and Luckett, respondent ; and Downing, appellant, and Luckett, respondent.*

Michaelmas Term, Nov. 15, 1847.

**QUALIFICATION TO VOTE AS OCCUPYING TENANT.—“OTHER BUILDING” WITHIN 2 W. 4, C. 45, S. 27.—EXCLUSIVE OCCUPATION.—CONTROL OVER KEY OF OUTER DOOR.**

*Where two claimants to vote occupied in the one case, two rooms in a house, and in the other case a counting-house, at a sufficient rent, and the landlord in the former instance occupied a shop and parlour on the ground floor, and had a key to the outer door in common with the claimant, and in the other instance occupied a counting-house in the same house, the key to the outer door of which was exclusively kept by a clerk of the landlord's, who resided on the premises for protection's sake and the accommodation of the occupiers, whom he let in and out at night when the outer door was closed ; the landlord in neither case himself residing on the premises.*

*Held, that the claimant in respect of the occupation of the rooms was as much entitled to vote as the claimant who occupied the counting-house, the former being within the meaning of the words “other building” in the 27th section of the 2 W. 4, c. 45 ; that both claimants possessed a sufficiently exclusive right of possession to constitute them tenants and not lodgers ; and that the circumstance of the claimant in the one case having the use of the key to the outer door in common only with the landlord, and of the key of the entrance in the other case being exclusively kept by a resident clerk of the landlord, did not qualify the right and interest of the claimants so as to make them the less tenants.*

In the first of the above cases the statement of the case was as follows :—The respondent objected to the name of Moses Toms being retained on the list of persons in the parish of St. Giles without, Cripplegate, entitled to vote for the city of London. The facts of the case were these :—Moses Toms occupies the first floor, consisting of two rooms in the house No. 21, Milton Street, in the said parish, in which he lives and has resided for the last year and three-quarters, at a rent of 5s. 6d. a week. His landlord occupies a shop and parlour on the ground floor in the same house, but does not sleep there, and three other persons occupy other distinct apartments up-stairs in the house. There is but one outer door to the house, by which the landlord, in common with

all the inmates, enters and comes out. The landlord, the party objected to, and the three other inmates, have each respectively a key of the outer door, and they all lock or unlock that door when and as they please. The door is never barred or fastened inside at night ; there is neither bolt nor chain to it ; it stands open during the day time. The landlord's shop-door is inside the passage, which passage the party objected to has to enter and pass along to get to the staircase that leads up to his apartments, and which staircase is shut off from the passage by a swing door which has no lock to it. There is a back kitchen at the end of the said passage, in which there is a cistern for water, and from which all parties in the house are supplied with water upon going there for it. The outer door is opened in the morning by the party who has occasion first, and locked at night by whoever has last occasion either to enter or leave the house.

The question was, whether, under the circumstances stated, the occupation of Moses Toms was such an occupation in law as to entitle him to vote under the Reform Act. On behalf of the appellant it was contended, that as the landlord did not reside in, but merely occupied a part of the house, the appellant having a key as well as the landlord of the outer door, and residing there, the landlord's occupation did not prevent Toms from being enfranchised ; and that therefore he was entitled to be registered.

It was urged, on the contrary, that Toms had no exclusive control over the outer door, and that he was a mere lodger. The revising barrister held the objection to be valid, and expunged the name of the appellant from the list of voters. If the court should be of opinion that that decision was erroneous, the name of the appellant was to be reinserted in the said list of voters in the before-mentioned parish.

In the second of the above cases the case stated that the respondent objected to the name of Henry Browne Downing being retained in the list of persons in the parish of Allhallows, Staining, entitled to vote for the city of London, in respect of the occupation of a counting-house at No. 11, Mark Lane, in the said parish. The facts of the case were these :—Henry Browne Downing occupies a counting-house at No. 11, Mark Lane, aforesaid, and he has done so for three years, at a rent of 20l. a year. Six other parties besides his landlord respectively occupy counting-houses in the same house, namely, No. 11, Mark Lane. There is but one outer entrance into the house. At the outer entrance there is a small swing iron gate, which is kept sometimes open and sometimes shut during the daytime, but it is never locked. There is also a large wooden gate, and likewise a door at the outer entrance, both of which are kept open during the daytime, but they are shut and locked inside every night by A. W. Enever, one of the landlord's clerks, who resides in the upper part of the house with his family, and who keeps the keys. Enever also unlocks and opens the outer door

and the large gate every morning. The landlord requires him to reside there for the protection of the premises and the accommodation of those who occupy the counting-houses at No. 11, aforesaid, and if he were to leave, the landlord must have another person to reside there in his place. Neither the large gate nor the outer door has a keyhole outside, therefore they can only be locked and unlocked inside. Enever pays no rent in money for his apartments, but considers that he pays it in service. After entering at the outer entrance, which is common to the landlord and to all his tenants, proceeding along a short passage, ascending some steps, and turning a short way to the right, the party objected to pass the door of the landlord's counting-house, and then through folding-doors into a passage which leads to the door of his own counting-house. There is a water-closet near the landlord's counting-house door common to all the inmates, and the party objected to, if he desires to use it, must return to it through the folding-doors. He pays Enever a small yearly sum in consideration of his servant's sweeping the passage between his own and the landlord's counting-house. He has no key of the outer gate or door, and if he wishes to gain admittance after the large gate and door at the outer entrance are shut at night, or before they are opened in the morning, he can only do so by ringing a bell and getting it answered by Enever, the landlord's clerk. The party objected to read a letter addressed to himself by the said Enever, and afterwards put it into the hands of the revising barrister. The following is a copy thereof:—

“ 11, Mark Lane,  
15th Oct. 1847.

“ Dear Sir,

“ In reply to your question whether the outside gates are locked at night or not by myself or servant, I beg to state they are, but of course you or your servant would be admitted at any hour of the night, you having a right.

“ I am, &c.

(Signed) “ A. W. ENEVER.

“ To H. B. Downing, Esq.”

It was contended on behalf of the objector, that there being but one outer entrance into No. 11, the landlord using that entrance and occupying a counting-house there; the landlord's servant keeping the keys of the outer entrance, and the appellant having no key thereof nor independent power of access, the appellant was not entitled, under the 2 Wm. 4, c. 45, sec. 27, to be registered as a voter for the said city in respect of his said occupation. On the contrary, it was urged on behalf of the appellant that the Reform Act did not contemplate that under the circumstances stated the party objected to should not be enfranchised, and that he was entitled to vote. The revising barrister held the objection to be valid, and expunged the name of the party from the list of voters. If the court should be of opinion that that decision was erroneous the name of

the appellant was to be reinstated in the said list of voters for the said city.

*Crompton*, for the appellants in both cases. The present case of *Toms v. Luckett* is not the case of a mere lodger, but that of a tenant having the exclusive control over the premises demised to him. On this point the case of *Wright v. The Town Clerk of Stockport*, 5 Man. & Gr. 33, 1 Lutw. Reg. Cas. 32, was a strong authority. The circumstances here were very different from those in the case of *Potts v. Kneadley*, 7 Man. & Gr. 85, 1 Lutw. Reg. Cas. 196, for there is nothing here to show that the landlord had any possessory dominion over the house, and each occupier has a distinct and uncontrolled right to the use of the outer door. In *Score v. Huggett*, 7 Man. & Gr. 95, 1 Lutw. Reg. Cas. 198, it was held that a person having the separate and exclusive occupation of apartments in a house, of which apartments he had the key, and having also a separate key for his own use of the outer door, the landlord of the house not residing therein nor occupying any part of it, was an occupier and tenant of a house. That case governed the present, unless the landlord's occupying any part of the premises, and having, in common with the tenants, a key to the outer door, made a difference, which it is submitted it did not. *Wansey v. Perkins*, which would be relied on by the other side, was the case of a mere lodger. He also referred to *Kearney's case*, *Alcock Reg. Cas. 22*; *Rex v. Rodgers*, 1 Leach, C. C. 89; *Reg. v. Ponsonby*, 11 Law J. N. S. M. C. 75; 32 B. Rep. 14; *Monks v. Dykes*, 4 M. & W. 567; *Fenn v. Grafton*, 2 Bing. N. C. 617.

*Grove*, for the respondents in both cases. The 27th section of 2 Wm. 4, cap. 45, gives the right to vote to a party who shall occupy, as owner or tenant, any house, warehouse, &c. In the present case, the appellant, it is submitted, does not come within that provision. The true criterion, as supported by all the cases, is not whether the landlord resides on the premises, but whether or not the person occupying enjoys an exclusive right of possession. In *Wright v. The Town Clerk of Stockport*, the landlord not only did not reside on the premises, but it also appeared that he did not retain a key of the outer door; that case, therefore, differed from the present. The occupation of the shop here by the landlord, although he did not sleep on the premises, clearly qualified the other occupiers' interests, so as to prevent their enjoying a sufficient exclusive possession. The case of *Wansey v. Perkins*, 7 Man. & Gr. 151, Lutw. Reg. Cas. 252, is rather an authority in favour of the respondent. In that case, *Tindal, C. J.*, says, the landlord “ having the whole of the house, lets the present claimant into the possession of the second floor, retaining himself the possession of the other part of the house. That does not appear to me to constitute a separate occupation of the second floor by the tenant, but puts him in the situation of a lodger or inmate.” In that case, too, the claimant, as here, had a key to the outer door as well as the landlord;

it is submitted, therefore, that it is necessary for the claimant to have the exclusive control over the outer door to entitle him to vote. The cases referred to on the other side as to burglary, have no application here. *Rex v. The Inhabitants of Ditchent*, 9 B. & C. 176, 185, was referred to on this point. In the course of the argument the case of *Whithorn v. Thomas*, 7 Man. & Gr., 1 Lutw. Reg. Cas. 125, was also cited.

*Crompton* was heard in reply.

*Wildc*, C. J. In this case of *Toms v. Luckett*, the question referred to the court is very limited, for the statement of the case, after setting forth various facts as to the interest of the tenants, and the mode of enjoying the premises, proceeds to say that it was urged on behalf of the appellant, that as the landlord did not reside in the house, but merely occupied a part of it, and as the appellant resided on the premises, and had a key to the outer door as well as the landlord, the occupation by the landlord did not prevent the appellant from having a right to vote. The objection, therefore, is that the party had not the exclusive control over the outer door, and upon that the revising barrister gave his decision. Now I am of opinion that such objection is not well founded, and that the absence of exclusive control over the outer door does not disentitle the party to vote. Looking at the facts of the case, the shape of the objection, and the mode in which the question is referred, it seems to me that the intention of the revising barrister was to ask us whether or not that absence of control had the effect of preventing the appellant from being considered a tenant within the act, and made him merely a lodger. The 27th section of the Reform Act enacts that a party "who shall occupy, &c., as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately, or jointly with any land, &c., occupied therewith, as owner, or occupied therewith by him as tenant, under the same landlord, of the clear yearly value of not less than 10*l.*, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough," &c. Now what was intended he be comprised within the words, "house, warehouse, counting-house, shop?" It is quite well known that what is meant by a counting-house, as contradistinguished from a house, is an apartment in a house used for particular purposes; and the same with respect to the other terms, "shop and warehouse," used in the act, all import parts of houses used for particular purposes. The following words in the act, "or other building," were meant to include all other occupations of the nature of that of a warehouse, counting-house, or shop, where some distinct portion of a house are in the same manner occupied separately from the whole house, and were used by the legislature to prevent nice distinctions, which otherwise would have been very likely to arise. In the present

case, the appellant occupied, it is found, a certain apartment in a house, and there cannot be a doubt that it ought to be considered another building as contra-distinguished from a house, just as much as a shop, warehouse, &c., is another building under the provisions of the act. It seems to me, therefore, that the appellant occupies that description of premises which, if occupied in a certain character, entitles him to have a vote.

The character, then, which he must have is that of a "tenant," construing that term in the way in which the legislature intended that it should be construed, namely, in its popular sense. He must be an occupier under a demise, which confers such a title as gives him the exclusive right to the possession of the premises. Here the case finds that the appellant occupied two rooms in the house, at a rent of 5*s.* 6*d.* per week, and from that I should have been led to infer that the occupation was exclusive, even if the case had not found more; but looking at the whole of the facts, it is perfectly clear that the appellant was on all sides deemed to have the exclusive right to his part of the house. Then here is a party occupying as tenant, with the exclusive right to certain apartments, and what is there further shown in this case to cut down his qualification in that respect? The character of the occupation, and the nature and extent of the party's interest, must be inferred from all the circumstances of the particular case. A man may occupy certain rooms, in which he may have the exclusive right of possession, but there may be somebody who possesses such superior mastership and dominion over the house as may prevent his having the character of tenant within the act of parliament. The court have been called upon in particular cases to say whether, under certain circumstances, a party's interest in the exclusive occupation of premises had been cut down, as where the landlord has been found occupying the premises, and retaining the key of the outer door, the court has said that the mastership was so held by the landlord, as to prevent the occupier from being considered as a tenant within the act, forming their legal opinion on the two facts, residence on the premises, and retention of the key, and that they have done even where accompanied with the circumstance of the occupier also having a key. The present is not a case of the landlord residing on the premises, but merely occupying certain rooms in the house. If he did himself reside on the premises day and night, there might not be the same necessity that the contract of tenancy should give the tenant the absolute right to enter at all times. But where he resides, as here, off the premises, what is the just inference as to the tenant's interest and right? If the landlord is not on the spot to exercise dominion over the outer door, who is to have the right to enjoy the use of that door? Is the tenant to have it sometimes and not at others? No. There is certainly no such qualification of the right; and whatever may be the just inference where

the landlord resides on the premises, retaining entire and exclusive dominion over the premises, except in so far as he personally parted with it, the same would not be warranted by the fact of the landlord's merely having a key of the outer door, and being otherwise situated as is found in the present case, but not residing on the premises. I cannot see on what ground the simple fact of the tenant's not having exclusive control over the outer door is to destroy his right to vote. It may be a circumstance from which to infer that the party is not a tenant, but, unless coupled with other matters going to show that result, it could of itself have no effect. I think, therefore, that the appellant here had sufficient control over the premises to prevent the circumstance of the landlord's possessing a key of the outer door qualifying his interest. Suppose the case of an occupier of a separate floor, the landlord residing at a distance, and the occupier being without the exclusive control of the key of the outer door, can it be said that such occupier would not be entitled to vote? The mere retention of a key by the landlord appears to me not to have the effect of altering the tenant's right, and that is the only question raised in the present case. I think the revising barrister was wrong, and the appellant ought to be restored to his right to vote.

*Coltman, J.*, concurred.

*Maule, J.* I also think that the appellant in this case must succeed. The question intended to be raised appears to be not so much as to the nature of the thing occupied, as the nature, amount, and quality of the occupation. It is, whether the occupation in the present case is such as to entitle the appellant to vote as tenant under the provisions of the 27th section of the Reform Act, or whether it is not merely that of a lodger; which in some cases has been held to be a different occupation from that of a tenant. The spirit of those cases will be found, I think, to be this, that where the owner of the whole house takes in some other person to live with him, though such person may occupy a room in the house which no one else shares, and may have free ingress and egress in and out of it, yet if the owner otherwise retains the general character of master in the house, that person is occupying as a lodger, and not a tenant within the act. This is altogether independent of the party's having a key of the outer door to let himself in and out at pleasure. If he have a key for such a purpose, I cannot conceive how other persons having the same right will hinder him from having the exclusive right to the rooms which he occupies, or diminish the right dependent on his occupation. The question of whether the party is a lodger or a tenant I think depends on the circumstance of there being a person living in the house in the quality and capacity of master of the house, and having some degree of control dependent on that character of master, as to that part of the house which the party occupies. Where that is the case the party is not a tenant within the act, but a mere lodger, to whom the statute

does not give the elective franchise. The circumstance, however, of the landlord being master of the house does not necessarily follow from his being landlord. If he did not reside in the house by himself or his family, he is not to be understood as being the master of the house possessing control over the whole of it, nor will such right of control be inferred from the mere character of landlord. When a landlord lives in the house and retains the character of the master, then he may make a person occupying a part of the house a lodger merely, and not a tenant; but when he lives out of the house, no one can properly consider him as master of the house for that purpose. So if the landlord merely occupies a portion of the house, as in the present case, I think no question arises, and that the person who takes apartments at a rent is to be considered as a tenant and not a lodger. On the whole, therefore, I am of opinion that, consistently with all the cases on the subject, the appellant here is entitled to vote, and that the decision of the revising barrister must be reversed.

*Williams, J.*, concurred.

Decision reversed.

The judgment of the court in the second of the above cases (*Downing v. Luckett*) was next delivered as follows:—

*Wilde, C. J.* It is quite clear in this case that the landlord retained nothing but his right and interest as landlord with respect to the counting-house in question. This is then a counting-house falling within the express words of the act, and the question is, whether because the landlord employs a person to live on the premises for the protection of the premises and the accommodation of the tenants, he has by so appointing a person for the benefit of the occupiers and for their accommodation, established any relation that limits the interests of the tenants who hold under his demise. It appears to me that this case is like that of the houses in the Burlington Arcade or Albany, where there is a gate which forms a common entrance, and for the accommodation of the persons residing there a person is employed to open and close such common entrance, as also for the protection of the premises, and is not put there to qualify in any way the tenants' interests, a fact expressly found in the present case. It appears also in this case that the passage is under the control of the several occupiers of the counting-houses, they paying for cleaning each the portion leading to his rooms. The person so employed by the landlord was for a purpose wholly distinct from the securing of any exclusive right as landlord, but merely for the general convenience of the occupiers, and therefore it is quite clear in this case that the appellant occupied the counting-house as tenant, and there is nothing to warrant the inference of any such restraint as prevented the right to vote within the act.

*Coltman, J.*, *Maule, J.*, and *Williams, J.*, concurred.

Decision reversed.



*Eschequer*.

*Orgill v. Bell*. Michaelmas Term, 1847.

IRREGULARITY.—NULLITY.

*An order by a judge at chambers to set aside the verdict in a case tried before a sheriff is an irregularity not a nullity, and therefore an application to discharge it, made after an interval of two terms, is too late.*

THIS was a rule obtained by Crouch, on the last day of Trinity Term, to set aside an order made on the 6th of July, 1846, by Mr. Baron Platt at chambers, for setting aside a verdict before the sheriff of Middlesex, and all subsequent proceedings, on the ground that the defendant had not received due notice of trial. The plaintiff had given notice for a day on which the sheriff sat only by adjournment to dispose of a few cases that had remained over. When that day came, and the mistake was discovered, it was too late to give due notice for the next original sittings, and the plaintiff thereupon proceeded to try. The defendant's attorney protested against the trial going on, notwithstanding which the plaintiff went on with it, and immediately afterwards the defendant's attorney attended before the learned Baron, and obtained the order in question.

C. Jones, Serjeant, now shewed cause, and contended, that as a judge at chambers had jurisdiction to issue the writ of trial, it was only reasonable that he should have control over the proceedings to the end; and that even if he had not jurisdiction to set aside the verdict, but only to stay the execution, this order was only an irregularity, not a nullity, and therefore the application to set it aside was too late.

Crouch, contra, admitted that the application was too late if the order was only an irregularity, but contended that it was a nullity.

Pollock, C. B. How could it be a nullity when the other side at any time could send in a consent, and then there would be no nullity?

Crouch. This order was made in July, 1846. His learned friend came here in Michaelmas Term afterwards for a rule for judgment as in case of a nonsuit, which was discharged on payment of costs on the first day of Easter Term; so that the defendant himself treated this order as a nullity.

Pollock, C. B. This application must be discharged with costs. The order was made in July, 1846. I do not think it was a nullity. It was only an irregularity, and therefore the plaintiff ought to have applied within the first four days of Michaelmas Term to set it aside.

Alderson, B. I have no doubt this order was only an irregularity. It was an erroneous order originally, but the plaintiff ought to have applied in Michaelmas Term to set it aside. There must be an end of litigation somewhere. *Fieri non debuit sed factum valet*.

The other Barons concurred.

Rule discharged with costs.

*Court of Bankruptcy*.

*In re Willis*. Dec. 29, 1847.

PROOF OF DEBT.—SECURITY BY DRAWER OF BILL.

*Where the drawer of a bill deposits security with a party discounting, and the acceptor becomes bankrupt, the holder may prove against the estate of the bankrupt acceptor without giving up the security deposited by the drawer.*

Messrs. Overend, Gurney & Co. proposed to prove against the estate of the bankrupt (Willis) as indorsee of a bill of exchange for 989*l.* 12*s.*, dated the 28th August, 1847, at three months, drawn by one Richard Dutton upon the bankrupt Willis, and accepted by him. The bill was discounted by Messrs. Overend, Gurney, & Co. for Dutton, by whom it was indorsed to them.

Mr. Teague, on behalf of the assignees, submitted, that the proof ought not to be admitted. The facts were as follow:—Dutton, who was a wool factor, bought a large quantity of wool, on the joint account of himself, the bankrupt Willis, and a third person named Chapman. He drew bills on Willis and Chapman to pay for the wool, and took these bills to the amount of 3,321*l.* to Messrs. Overton, Gurney & Co. to discount, but they declined to discount the bills unless they had collateral security, and the wool bought by Dutton was thereupon deposited with them, and was still held by them as security for the bills. It was submitted, that Messrs. Overend and Gurney were bound, either to give up the security, or to sell the wool, and if it did not produce sufficient to pay the bills, to prove for the residue only.

Mr. Vallings, in support of the proof, contended, that Messrs. Overend and Gurney, in discounting the bill, were not bound to consider what transactions might have taken place between the drawer and acceptor. The wool was properly deposited with them, and they were ignorant of any joint transaction between the drawer and acceptor. It was the ordinary case of a person proposing to prove against a bankrupt's estate, who held security, not from the bankrupt but from a third person.

Mr. Commissioner Evans. Dutton the drawer and the bankrupt were not partners?

Mr. Teague. They were only partners in the wool transaction, and the wool bought for their joint account is deposited with Messrs. Overend and Gurney.

Mr. Commissioner Evans. This appears to me to be like the common case of a party taking a bill or note from one person, and taking the security of a third person for its payment. He is not bound to enforce the security before proving against the estate of the party to the note who becomes bankrupt. I think the proof of Messrs. Overend and Gurney must be admitted.



## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.  
PRACTICE.

## AFFIDAVITS.

See *Issue*.

## AMENDMENT.

1. *Irregularity.—Jurisdiction.—Master of the Rolls.—Vice-Chancellor.*—On a motion to discharge an order of course to amend in a cause attached to another branch of the court, the Master of the Rolls has not jurisdiction to take into his consideration the conduct of the parties, and will only determine whether the order has been regularly obtained.

An order of course to amend obtained while an answer is outstanding is not "irregular," though under the circumstances it may have been improperly obtained. *Arnold v. Arnold*, 9 Beav. 206.

2. *Order of May, 1845.—Title of answer.*—The 16th General Order of May, 1845, Art. 38, has reference to amendments after answer. When the amendments are before answer, the case is governed by the 14th article of the same order.

Where a bill was amended before answer, an answer expressed to be "to the bill of complaint, &c.," is regular; but where the amendments take place after answer, the subsequent answers should be headed "to the amended bill of complaint." *Rigby v. Rigby*, 9 Beav. 311.

See *Answer*, 2; *Dismissal*, 2; *Order*, 2.

## ANSWER.

1. *Taking answer off the file.*—A bill containing reflections on a party ordered by consent to be taken off the file. *Clifton v. Bentall*, *Clifton v. Bothamley*, 9 Beav. 105.

2. *Amendment.*—A defendant may put in his answer notwithstanding an order to amend has been served upon him. *Mackerell v. Fisher*, 14 Sim. 604.

Case cited in the judgment: *Livingstone v. Cooke*, 9 Sim. 468.

See *Amendment*, 2; *Infant*.

## APPEAL.

*Costs.—Appearance.*—On the hearing of an appeal presented by a defendant, the court, having intimated that a question included in it relating to costs could not be gone into in the absence of co-defendants who had not been served, counsel were in the course of the argument instructed to appear for them gratis. But the Lord Chancellor refused to sanction such an appearance, and disposed of the case as if they had not appeared. *Attorney-General v. Gibbs*, 2 Phill. 327.

See *Staying Proceedings*, 1, 2. "

## BILL, SERVICE OF.

*New orders.*—The prayer that a defendant, on being served with a copy of the bill, may be bound by the proceedings in the cause, need

not be inserted in the prayer of process. *Smith v. Groves*, 14 Sim. 603.

Case cited in the judgment: *Gibson v. Haines*, 1 Hare, 317.

2. *Service of copy bill.*—Where the time for serving a defendant with a copy of the bill has been enlarged, it is not necessary to serve the defendant with the order enlarging the same. *Fenton v. Clayton*, 15 Sim. 82.

## CONTEMPT.

*Illness of defendant.*—Proceedings for contempt for want of answer stayed on proof of the defendant's inability by reason of illness to put in his answer. *Hicks v. Lord Atrantley*, 9 Beav. 163.

## CREDITOR'S SUIT.

*Master's report.—Acquiescence.—Irregularity.—Compromise.*—The Master made a report not strictly following the order of reference, but no objection or exception having been taken thereto, it had been confirmed. A party to the suit afterwards petitioned, on the ground of the informality, to discharge the orders nisi and absolute, confirming the report, but it was dismissed.

A creditor's bill was filed by A. on behalf of himself and other creditors against B. and others. After decree the suit abated by the death of B. C., his executor, filed a bill of revivor on behalf, &c., and the suit was revived. A. afterwards filed other bills, and the proceedings before the Master were attended by A. on behalf of the creditors at large. Held, that C. was not by the fact of filing the bill of revivor on behalf, &c., incapacitated from compromising for his own benefit a claim on the estate. *Armstrong v. Storer*, 9 Beav. 277.

Case cited in the judgment: *Earl of Bath v. Earl of Bradford*, 2 Ves. sen. 591.

See *Re-hearing*.

## DECREE.

1. *Omission.—Petition.—Conveyance.*—A direction of the Master to settle a conveyance omitted in a decree, was supplied by petition.

A secret purchase by an agent from his principal was set aside. By the decree, possession was directed to be given and a conveyance to be executed. Accounts were also directed to be taken of the rents and purchase-money, and the balance was directed to be paid, but no lien was given: Held, that the conveyance must at once be made without waiting for the result of the accounts. *Trevelyan v. Charter*, 9 Beav. 141.

2. *Error.*—An accidental slip in a decree directing a sale, if certain persons "and the heir-at-law" should be found parties, corrected on petition by substituting the words "other than the heir-at-law." *Turner v. Hodyson*, 9 Beav. 265.

## DISMISSAL.

1. *Filing replication.*—On a motion to dis-

miss for want of prosecution, the plaintiff undertook to file a replication. The case stood over to enable him to perform his undertaking, and having so done, was ordered to pay the costs of the motion. *Young v. Quincey*, 9 Beav. 160.

2. *Amendment.*—*Last answer.*—*General orders.*—Under the general orders, any defendant is entitled to move to dismiss for want of prosecution after the expiration of six weeks from the time when his answer is deemed sufficient. Upon such a motion all unavoidable and all just and reasonable causes of delay may be considered, and in the cautious exercise of its discretion, the court may grant or refuse to grant any further time the plaintiff may require.

An order of course, though obtained within the time limited by the general orders, discharged, on the ground of the inexcusable delay of the plaintiff in proceeding, and getting in the answer of a defendant under her control, and because it had been obtained for the purpose of defeating a motion to dismiss for want of prosecution. The expressions “last answer,” and the “last of several answers” in the general orders, regulating the period within which a plaintiff may obtain an order of course to amend, mean the last answer required in the then state of the record. *Forman v. Gray*, 9 Beav. 200.

Case cited in the judgment: *Dalton v. Hayter*, 7 Beav. 589.

3. *Want of prosecution.*—*Replication.*—On a motion by one of several defendants to dismiss for want of prosecution, it is not sufficient for the plaintiff to show that the answers of other defendants have not been filed, he must also show that due diligence has been used in getting them in. Plaintiff having failed in so doing, was ordered to pay the costs of the motion and file a replication within a fortnight, and in default, the bill was ordered to be dismissed with costs. *Earl of Mornington v. Smith*, 9 Beav. 251.

See *Orders*, 1.

#### EXCEPTIONS.

1. *Irregularity.*—*General orders.*—In a transition case under the Orders of 1845, exceptions were filed one day too late, the court declined to order them to be taken off the file. *Whitmore v. Sloan*, 9 Beav. 1.

2. *Reference.*—*Irregularity.*—Exceptions for insufficiency were referred by the plaintiff to the Master in rotation, instead of to the Master to whom there had been a previous question. Pending the discussion on the irregularity in the Master's office, the time limited for obtaining the report expired. The court considering the error to have arisen from inadvertence, and not from wilfulness or perverseness, gave directions to the Master to hear the exceptions. *Tuck v. Rayment*, 9 Beav. 38.

3. *Nunc pro tunc.*—*General Orders.*—An order for leave to file exceptions in the form of *nunc pro tunc* will not now be made, even by consent, but a special order may be made for filing them, notwithstanding the time limited

has expired. *Biddulph v. Lord Camoys*, 9 Beav. 155.

4. *Instanter.*—*16th Order of May, 1845.*—A reference of exceptions made *instanter* in an injunction case and upon an *ex parte* motion. It is not an order of course, but a special case of prejudice must be made out by affidavit. *Muggeridge v. Sloman*, 9 Beav. 314.

5. *Plea.*—After plea and answer filed and plea overruled, the plaintiff, notwithstanding the expiration of six weeks from the filing of the plea and answer, filed exceptions to the answer, and obtained an order at the Rolls to refer them to the Master.

*Held*, that the exceptions were regularly filed, and per the Master of the Rolls and Wigram, V.C. that the 16th Order of May, 1845, rule 22, applied to this case; the six weeks mentioned in the order running from the time of overruling of the plea.

A motion to take exceptions off the file for irregularity may be made before a Vice-Chancellor, notwithstanding the pendency of the common order at the Rolls for referring the exceptions to a Master. *Esdaile v. Molyneux*, 2 Coll. 641.

#### EXECUTION.

*General Orders of May, 1839.*—*Writ of fi. fa.*—Where a writ of *fi. fa.* issued under the General Orders of May, 1839, has failed to satisfy the demand, another writ may issue into another country. *Spencer v. Allen*, 2 Phill. 215.

#### HABEAS CORPUS.

Returns to writs of *habeas corpus*, when disposed of, are to be sent to the Record Office, and not to be re-delivered to the officer who made them. *Oldfield v. Cobbett*, 2 Phill. 289.

#### INFANT.

*Answer after coming of age.*—An infant defendant, on attaining 21, discharged the solicitor who had acted for her in the suit. Afterwards that solicitor was served with a subpoena for her to hear judgment. He returned the subpoena to the plaintiff's solicitor, and stated at the same time that the defendant had come of age, and that he was no longer employed for her. Some months afterwards the cause was heard, but without the defendant having been served with a subpoena to hear judgment, or any one appearing for her at the hearing, and a decree was made in which she was described as an infant. *Held*, that she was entitled to put in a new answer to the bill. *Snow v. Hole*, 15 Sim. 161.

#### INJUNCTION.

*Motion standing over.*—*quia timet.*—The circumstance that a party is commencing operations avowedly for a purpose which another conceives to be injurious to him and illegal, does not warrant the latter in applying for an injunction, unless the circumstances of the case at the time when the motion is made are such as to enable the court either to form its own opinion as to the legality of the meditated purpose, or to put that question into a course of immediate trial; and therefore, where that is not the case, the motion will not be allowed to

stand over till the purpose has been so far executed as that its character may be judged of, but will be at once refused. *Haines v. Taylor*, 2 Phill. 209.

#### ISSUE ON INTERLOCUTORY MOTION.

*Heir.* — *Affidavits.* — Where the plaintiff's right depends on his being heir, the court has jurisdiction to grant an issue to try that fact on an interlocutory motion. If the facts of the case make it proper, it is not very important, whether they appear on a motion for an injunction or receiver, or upon a direct motion for the issue.

Such an issue was refused in a case where there was nothing but the bare assertion of the plaintiff's heirship on the one side, and the assertion of the defendant's ignorance on the other.

On such a motion, affidavits of facts, of which the defendant by his answer professes to be ignorant, are inadmissible. *Lancashire v. Lancashire*, 9 Beav. 259.

Cases cited in the judgment : *Goulden v. Lydiat*, 4 Y. & Coll. 374, n.; *Fullagar v. Clark*, 18 Ves. 483; *Middleton v. Sherburne*, 4 Y. & Coll. (Ex.) 358; *Gompertz v. Ansdell*, 4 Myl. & Cr. 449.

#### INTERPLEADER.

*Title.* — It is irregular in an interpleading suit to direct any inquiries as to the conflicting claims of the defendants until the answers of all of them have been put in.

Where an injunction has been granted in an interpleading suit, all the defendants are interested in it, and all ought therefore to be served with a notice of a motion to dissolve it.

On a motion to dissolve an injunction in an interpleading suit, an order was made directing an inquiry as to the title of the defendant who moved, but with respect to the co-defendant who had not answered and did not appear upon the motion, only directing an inquiry whether he had made a claim. After the Master had made his report, and the court had pronounced its final order, the order of reference was discharged and the consequential proceedings set aside at the instance of the plaintiff, on the ground—1st, That the order was irregular in not reciting an affidavit of service on the absent defendant. 2ndly, That it was contrary to the practice to direct any inquiry as to the title of the defendants, until the answers of all of them had come in; and 3rdly, That the inquiry actually directed was defective in not extending to the title of the absent defendant as well as to that of the other. *Masterman v. Lewin*, 2 Phill. 182.

#### IRREGULARITY.

See *Creditor's Suit*; *Exceptions*, 1, 2; *Order*, 1.

#### JURISDICTION.

*Master of the Rolls.* — *Vice-Chancellor.* — In the vacation, the Vice-Chancellor heard a motion for the Master of the Rolls, which he refused: *Held*, that no application for the same purpose could afterwards be made to the Master of the Rolls, even if supported on different grounds from those before the Vice-Chancellor. *Man v. Ricketts*, 9 Beav. 4.

See *Amendment*, 1; *Orders*, 2.

#### LUNACY.

*Committee's security.* — Securities belonging to a lunatic's estate ordered to be deposited with the Master, for the purpose of reducing the amount of the committee's recognizances. *Eagle, in re*, 2 Phill. 201.

#### MARRIED WOMAN.

1. *Next friend.* — *Forma pauperis.* — An application by a married woman, plaintiff, for leave to change her next friend is in the discretion of the court, and will not be granted if there be reason to believe that the defendant's security for costs will be thereby prejudiced.

Whether the court will stay proceedings in a suit by a married woman on the ground that her next friend is not of ability to answer costs.

*Quere.* *Jones v. Fawcett*, 2 Phillips, 278. \*

2. *Payment out of court.* — *No settlement.* — When payment out of court is asked of money belonging to a married woman, an affidavit that the fund is not settled is insufficient. It must be shown either that there is no settlement, or what the settlement was. *Britten v. Britten*, 9 Beav. 143.

#### ORDERS.

1. *Irregularity.* — *Right of plaintiff to dismiss bill as of course after demurrer overruled.*

— If a petition for an *ex parte* order suppresses any fact which, whether really material or not, would, if communicated to the officer whose duty it is to draw up the order, prevent him from doing so without mentioning the matter to the court, the order will be discharged for irregularity.

*Semble.* After a general demurrer to a bill has been overruled on argument, the plaintiff is not entitled as of course to an order dismissing his bill with costs. *Cooper v. Lewis*, 2 Phill. 178.

2. *Amendment.* — *Master of the Rolls.* — *General orders.* — *Jurisdiction.* — An order of course for referring exceptions for insufficiency obtained within the proper limit as to time, but amended after its expiration, discharged for irregularity.

An order of course may be amended before service, but *semble*, that after service it cannot be amended in the absence of the party to be affected thereby.

In discharging an order of course attached to another court, the Master of the Rolls has not authority to direct the costs to be costs in the cause. *Wool v. Townley*, 9 Beav. 41.

3. *Enforcing payment.* — The 12th General Order of August, 1841, has reference only to orders in a cause, and is inapplicable to the four day order. *Semble.* *In re Blake and Young*, 9 Beav. 209.

#### PAUPERIS, FORMA.

See *Married Woman*, 1; *Receiver*, 2.

#### PETITION.

*Order of hearing.* — Where a petition to confirm a report and a counter petition for a reference back come on to be heard, the latter is to be heard first. *Sturgis v. Paley*, 14 Sim. 599.

PLEA.

See *Exceptions*, 5.

PRODUCTION OF DOCUMENTS.

It is not the practice to order the production of documents admitted in the answer for a limited period. *Attorney-General v. Bingham*, 9 Beav. 159.

RECEIVER.

1. *Accounts*.—*Master's certificate*.—*Four-day order*.—Upon the Master's certificate, that a receiver is in default, the four-day order upon him is of course, and therefore a motion to discharge such order on the ground of error or irregularity in the certificate, but not directly impeaching the certificate itself, will be refused. *Scott v. Platel*, 2 Phill. 229.

2. *Formd pauperis*.—The notice required by the 88th Order of May, 1845, does not apply to proceedings for appointing a receiver, but only to his taking possession of the estate when appointed.

The meaning of the common affidavit required on applications for leave to sue or defend in *formd pauperis* is, that the party has not 5*l.* in the world besides, &c., available for the prosecution or defence of the suit, and if he can make the affidavit with truth in that sense, the omission to set forth the details of his means and the circumstances which render them unavailable, is not such an omission of material facts as will induce the court on that ground alone to discharge the order. *Dresser v. Morton*, 2 Phill. 286.

3. *Heir*.—*Admission of title*.—A receiver will not be appointed where the rights as between the plaintiff and defendant are doubtful, if the defendant has obtained the legal estate without fraud, and no case of danger as to his security is alleged.

The plaintiff sued as heir, and the answer neither admitted nor denied that he held that character: *Held*, that that alone was not sufficient ground for refusing a receiver. *Lancashire v. Lancashire*, 9 Beav. 120.

4. *Repairs*.—The direction in an order appointing a receiver that he shall manage as well as set and let the estate authorises him to propose to the Master from time to time to make ordinary repairs to the buildings on the estate. *Thornhill v. Thornhill*, 14 Sim. 600.

REPLICATION.

See *Dismissal*, 1, 3.

REHEARING.

*Creditor's suit*.—*Review*.—Generally the court leaves the question of rehearing to the certificate of counsel, reserving, nevertheless, its power and jurisdiction, and if the order to rehear be obtained under such circumstances, or in such a manner, that any party has a right to complain, the proper proceeding is to apply to take the petition off the file.

Where a person not a party to the suit is desirous of obtaining a rehearing, he must apply for leave to present a petition to rehear.

A bill by a creditor to obtain relief inconsistent with an order in a previous suit was filed nearly 20 years subsequent to the date of the order, and prayed that the order might be reviewed. An application to rehear the former suit was refused on the ground of laches, acquiescence, and length of time, but with liberty to renew the application at the hearing of the second suit.

A party who comes in in a creditor's suit intrusting the management of the suit to the plaintiff, must, upon an application to review the proceedings, stand in the place of the plaintiff, and in the absence of fraud, be bound by his knowledge. *Gwynne v. Edwards*, *Gwynne v. Hicks*, *Rumstottom v. Edwards*, 9 Beav. 22.

SERVICE OF BILL.

See *Bill*.

STAYING PROCEEDINGS.

1. *Pending appeal*.—Motion by a party to a suit to stay proceedings to sell an estate pending an appeal, refused with costs, the applicant himself not having appealed. *Rowley v. Adams*, 9 Beav. 343.

2. *Appeal*.—Motion to stay proceedings to enforce an answer until an appeal to the House of Lords from an order overruling a plea should be disposed of, refused. *Garcias v. Ricardo*, 14 Sim. 528.

SUBSTITUTED SERVICE.

*Copy bill*.—Whether the court can order substituted service of a copy of bill under the 23rd Order of August, 1841, *quære*. *Thomas v. Selby*, 9 Beav. 194. •

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

AT WESTMINSTER.

Hilary Term, 1848.

|                    |                               |
|--------------------|-------------------------------|
| Tuesday . . . 11   | { Appeal Motions and Appeals. |
| Wednesday . . . 12 |                               |
| Thursday . . . 13  | { Petition-day.               |
| Friday . . . 14    |                               |
| Saturday . . . 15  | { Appeals.                    |
| Monday . . . 17    |                               |
| Tuesday . . . 18   |                               |
| Wednesday . . . 19 |                               |

|                    |   |
|--------------------|---|
| Thursday . . . 20  | { Appeal Motions and Appeals.                       |
| Friday . . . 21    |   |
| Saturday . . . 22  | { (Petition-day,) unopposed Petitions, and Appeals. |
| Monday . . . 24    |   |
| Tuesday . . . 25   |   |
| Wednesday . . . 26 |   |
| Thursday . . . 27  | { Appeal Motions and Appeals.                       |

|                    |    |  |
|--------------------|----|--|
| Friday . . . . .   | 28 | { (Petition-day) unopposed<br>Petitions and Appeals. |
| Saturday . . . . . | 29 | Appeals.   |
| Monday . . . . .   | 31 | { Appeal Motions and Ap-<br>peals.                   |

**Vice-Chancellor of England.**

|                     |  |
|---------------------|--|
| Tuesday . . Jan. 11 | Motions.   |
| Wednesday . . 12    | Petition-day   |
| Thursday . . . 13   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>Dir.                  |
| Friday . . . . 14   | Short Causes and Causes.   |
| Saturday . . . 15   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Monday . . . . 17   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Tuesday . . . . 18  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Wednesday . . 19    | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Thursday . . . 20   | Motions.   |
| Friday . . . . 21   | { (Petition-day) Petitions,<br>(unopposed first,) Short<br>Causes, and Causes. |
| Saturday . . . 22   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Monday . . . . 24   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Tuesday . . . . 25  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Wednesday . . 26    | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Thursday . . . 27   | Motions.   |
| Friday . . . . 28   | { (Petition-day) Petitions,<br>(unopposed first,) Short<br>Causes, and Causes. |
| Saturday . . . 29   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.      |
| Monday . . . . 31   | Motions.   |

**Vice-Chancellor Knight Bruce.**

|                    |  |
|--------------------|--|
| Tuesday . Jan. 11  | { Motions and Bankrupt Pe-<br>titions.                                     |
| Wednesday . . 12   | { (Petition-day) Cause Pe-<br>titions, Bankrupt Peti-<br>tions and Causes. |
| Thursday . . . 13  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.  |
| Friday . . . . 14  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.  |
| Saturday . . . 15  | Short Causes and Ditto.  |
| Monday . . . . 17  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.  |
| Tuesday . . . . 18 | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions.  |
| Wednesday . . 19   | Bankrupt Petitions.  |
| Thursday . . . 20  | Motions.   |
| Friday . . . . 21  | { (Petition-day) Petitions and<br>Causes.                                  |
| Saturday . . . 22  | Short Causes and Causes.   |
| Monday . . . . 24  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Further<br>Directions.    |
| Tuesday . . . . 25 | { Pleas, Demurrers, Excep-<br>tions, Causes, and Further<br>Directions.    |
| Wednesday . . 26   | Bankrupt Petitions.  |
| Thursday . . . 27  | Motions.   |
| Friday . . . . 28  | { (Petition-day) Petitions, and<br>Causes.                                 |
| Saturday . . . 29  | Short Causes, and Causes.  |
| Monday . . . . 31  | Motions.   |

**Vice-Chancellor M. B. Graham.**

|                    |   |
|--------------------|---|
| Tuesday . Jan. 11  | Motions and Causes.   |
| Wednesday . . 12   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Thursday . . . 13  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Friday . . . . 14  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Saturday . . . 15  | { Short Causes, Petitions,<br>(unopposed first,) and<br>Causes.           |
| Monday . . . . 17  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Tuesday . . . . 18 | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Wednesday . . 19   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Thursday . . . 20  | Motions and ditto.  |
| Friday . . . . 21  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Saturday . . . 22  | { Short Causes, Petitions,<br>(unopposed first,) and<br>Causes.           |
| Monday . . . . 24  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Tuesday . . . . 25 | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Wednesday . . 26   | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Thursday . . . 27  | Motions and ditto.  |
| Friday . . . . 28  | { Pleas, Demurrers, Excep-<br>tions, Causes, and Fur-<br>ther Directions. |
| Saturday . . . 29  | { Short Causes, Petitions,<br>(unopposed first,) and<br>Causes.           |
| Monday . . . . 31  | Motions and Causes.   |

**CHANCERY CAUSE LIST.**

Hilary Term, 1848.

AT WESTMINSTER.

Lord Chancellor.

**APPEALS.**

|                           |                             |
|---------------------------|-----------------------------|
| S. O. G. Sharp            | Taylor, appeal              |
| S. O. Lancashire          | Lancashire, ditto           |
| S. O. { Hodgkinson        | Hodgkinson } appeal         |
| S. O. { Ditto             | Jackson } appeal            |
| S. O. { Allfrey           | Allfrey, 3 causes appl.     |
| S. O. { Wilson            | Wilson } appeal             |
| S. O. { Ditto             | Ditto } appeal              |
| S. O. { Ditto             | Foster } appeal             |
| S. O. { Nightingale       | Goulbarn } ditto pt. hd.    |
| S. O. { Whittington       | Nightingale } ditto pt. hd. |
| S. O. { Williams          | Edwards } appeal            |
| S. O. { Soden             | Ditto } appeal              |
| S. O. { Westby            | Westby } ditto              |
| S. O. { Ditto             | Ditto } ditto               |
| S. O. { Ditto             | Ditto } ditto               |
| S. O. G. { Sharp          | Taylor } ditto              |
| S. O. G. { Ditto          | Ditto } ditto               |
| S. O. G. { Cridland       | Ld. Mawbey, do.             |
| S. O. G. { Fraser         | Jones } ditto               |
| S. O. G. { Cunningham     | Murray } ditto              |
| S. O. G. { Ditto          | Hay } ditto                 |
| S. O. G. { Ditto          | Murray } ditto              |
| S. O. G. { Lawrence       | Ditto } ditto               |
| S. O. G. { Maxwell        | Kibbithwaite, appeal        |
| S. O. G. { Ditto          | Ditto } ditto               |
| S. O. G. { Boyd           | Boyd } ditto                |
| S. O. G. { Watts          | Hyde, cause by order        |
| S. O. G. { The Gt. West-} | The Birmingham & Oxf.       |
| S. O. G. { ern Ry. Co. }  | Junction Ry. Co. appl.      |
| S. O. G. { Ditto          | Ditto } appeal              |
| S. O. G. { Gough          | Bult, ditto                 |
| S. O. G. { Attorney-Gen.  | Gibbs, ditto                |

Master of the Rolls.

JUDGMENTS (*reserved.*)

Master *v.* Marquis de Croismare, fur. dirs. and costs.

{ Bushell *v.* Giles }  
{ Bushell *v.* Giles }

PLEAS AND DEMURRERS.

*Stand over*, { Dean of Ely *v.* Gayford, six pleas.  
Armistead *v.* Durham, dem.  
Armistead *v.* Durham, dem.

CAUSES.

*Part heard*, Churchman *v.* Capon, fur. dirs. and costs.

*Easter Term*, Same *v.* Same, supple.

*To present petition*, Stourton *v.* Jerningham.

Smith *v.* Earl of Effingham, fur. dirs. and costs.

*First cause day after Term*, Hooper *v.* Denoon.

*Short*, Holloway *v.* Jacobs.

*S. O. to amend*, Williamson *v.* Gordon.

Ashwell *v.* Taylor.

*Short* { Murray *v.* Scarbrough } fur. dirs. and  
{ Same *v.* Crafton } costs.

*Part heard*, { Hemming *v.* Archer } fur. dirs.  
{ Same *v.* Same. } and costs.  
{ Same *v.* Same. }  
{ Same *v.* Same. }

*S. O. till petn. of rehearing disposed of* { Raworth *v.* Same.

Sinderson *v.* Williams.

{ Knight *v.* Majoribanks }  
{ Same *v.* Same }  
{ Same *v.* Gibbs. }

*After Term* { Hooper *v.* Salmon. }  
{ Tugwell *v.* Hooper }

M<sup>c</sup>Michael *v.* Kipling, exceptions.

{ Attorney-General *v.* Churchill. }  
{ Same *v.* Same. }  
{ Same *v.* Baker }

*First cause day*, Philipe *v.* Watkins, pro confesso.

*Part heard* { Heming *v.* Archer }  
{ Same *v.* Same } Re-hearing.  
{ Same *v.* Same }  
{ Same *v.* Same }  
{ Raworth *v.* Archer }

*First cause day*, Lindley *v.* Lindley.

*January 21st*, Wilson *v.* Eden, fur. dirs. & costs.

*Part heard, Jan. 17th*, Petre *v.* Petre.

Tanner *v.* Tanner.

*Part heard, S. O., to amend*, Chancellor *v.* Morecraft.

*Part heard*, Gallafent *v.* Brown

*Part heard*, { Pesterre *v.* Willis }  
{ Same *v.* Same }

{ Rice *v.* Gordon }  
{ Same *v.* Scarnett }  
{ Same *v.* Gordon }  
{ Carter *v.* Gordon }  
{ Same *v.* Ayers }

*First cause day*, Att.-General *v.* Lord Clifford.

*First cause day*, { Vaughan *v.* Rogers. }  
{ Same *v.* Harris. }  
{ Same *v.* Sturgis. }

Spottiswoode *v.* Thorndell.

{ Welham *v.* Welham }  
{ Daniels *v.* Welham }

{ Lloyd *v.* Noott } fur. dirs. and  
{ Same *v.* Same } costs.

Dudman *v.* Shirreff.

*First cause day*, Attorney-General *v.* Ward, exceptions, 2 sets.

Attorney-Gen. *v.* Ward, fur. dirs. and costs.

{ Havergall *v.* Harrison } exons. and fur. dirs.  
{ Same *v.* Same } and costs.

{ Colebrook *v.* Clark } fur. dirs. and costs.  
{ Same *v.* Williamson }  
{ Bremridge *v.* Turner }

Skepper *v.* King, fur. dirs. and costs.

{ Carr *v.* Hinderson } exons.  
{ Same *v.* Thomas }

{ Gas Light and Coke Com. *v.* Symonds }  
{ Symonds *v.* Gas Light and Coke Com. } exons. & fur.  
{ Stillman *v.* Gas Light and Coke Com. } dirs. and costs.

NEW CAUSES.

Micklethwait *v.* Nightingale.

{ Coombe *v.* Stewart }  
{ Hutchings *v.* Same }

Strutt *v.* Galsworthy, at defendant Galsworthy request.

Troubridge *v.* Cooper.

{ Peacock *v.* Penson }  
{ Same *v.* Same }

Attorney-Gen. *v.* Ainshe, re-hearing.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Harris *v.* Brunton, plea.

Clark *v.* Archebald, demr.

Leahy *v.* Vist. Melton, exons. as to pleading.

Ditto *v.* ditto. ditto.

Pollock *v.* Pollock, demr.

*S. O. G.*, Myers *v.* Macdonald, 2 causes.

{ Wastell *v.* Leslie, fur. dirs. and exns. pt. hd. }

{ Bird *v.* Ford, cause by order. }

*To fix a day*, Steward *v.* Forbes.

*S. O.*, Hickson *v.* Mainwaring, 2 causes.

Sewell *v.* Murray, otherwise Clarke, 4 causes.

Smith *v.* East India Company, pt. hd.

Edge *v.* Duke.

Cork *v.* Spain.

{ Smith *v.* Plummer. }

{ Ditto *v.* Smith. }

Fanshawe *v.* Walter.

Clark *v.* Wyburn.

Swift *v.* Grazebrook, exons. and fur. dirs.

Stiles *v.* Gay, exons, 2 sets, and fur. dirs.

Chambers *v.* Siggers.

Mills *v.* Smith.

Milford *v.* Reynolds, fur. dirs. & costs & 2 petns.

Barnard *v.* Cutts.

Ford *v.* Walker.

Leaf *v.* Patch.

Forbes *v.* Herring.

Knott *v.* Prier.

Knott *v.* Cottee.

Moyle *v.* Borlase.

Low *v.* Graves.

Bromley *v.* Loton.

Bownass *v.* Abbott.

{ Hammett *v.* Turner, fur. dirs. and costs. }

{ Ditto *v.* Ditto, suppl. bill. }

{ Lasbrooke v. Smith }  
 { Browne v. Ditto }  
 { Payne v. Wrench } fur. dirs. and costs.  
 { Milburn v. Woodcock }  
 { Ditto v. Baker }  
 Hobbhouse v. Bland.  
 { Player v. Watson } fur. dirs. and costs.  
 { Williams v. Ditto }  
 Chowns v. Sharpe, fur. dirs. and costs.  
 Jones v. Foulkes ditto  
 Agnew v. Fielder.  
 Earl of Balcarras v. Johnson, exons.  
 Duke of Leeds v. Earl of Amherst, exons.  
 Battershall v. Bishop of Winchester, fur. dirs.  
 and costs  
 Short, Cockerell v. Calvert.  
 Miles v. Fay, fur. dirs. and costs.  
 Surtees v. Hopkinson, exons.  
 Jenkins v. Briant, fur. dirs. and costs.  
 Walker v. Odling.  
 Ashburnham v. Ashburnham, fur. dirs.  
 Adey v. Arnold, fur. dirs.  
 Roberts v. Roberts.  
 Green v. Norton, 5 causes, fur. dirs. and costs.  
 Green v. Bourke.  
 Cocking v. Briggs.  
 Green v. Bailey, fur. dirs. and costs.  
 Palmer v. White.  
 Jones v. Evans.  
 Salomons v. Connop.

#### Vice-Chancellor Knight Bruce.

##### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Roberts v. Roberts, dem.  
 Wilkins v. Gaby, plea.  
 Sibson v. Edgworth, plea.  
 Farwell v. Seale, dem.  
 S. O. Schofield v. Calhuac.  
 S. O. { Parker v. Constable.  
 Ditto v. Sturges.  
 East, T., Bull v. Bonfield,  
 13th Jan., Glover v. East.  
 { Attorney-Gen. v. Gardner } pt. hd.  
 Ditto v. Ditto }  
 Robinson v. Bell.  
 Whatford v. Moore.  
 Williams v. Peel, 2 causes.  
 Burt v. Braddon.  
 After T., Fleming v. Carlyle.  
 Bycroft v. Horton.  
 Sampson v. Hawkins.  
 Weald v. Dixon.  
 Stopford v. Keily.  
 { Vincent v. Hart }  
 { Ditto v. Nicholson }  
 Wren v. Bradley.  
 Lazarus v. Colbeck.  
 Davies v. Thomas.  
 Batson v. Foot.  
 Emanuel v. Emanuel.  
 { Clarke v. Clarke }  
 { Ditto v. Fitzroy }  
 Wells v. Bourdillion.  
 Brookman v. Whitehouse.  
 Hilhouse v. Hilhouse.  
 Hall v. Lack, fur. dirs. and costs.  
 Raven v. Kirk, exons.  
 { Lyall v. Elias }  
 { Elias v. Lyall }  
 Harvey v. Renou.

Watkins v. Williams.  
 Empson v. Adey.  
 Sargeant v. Roberts, fur. dirs. and costs.  
 Watson v. Sharpe.  
 Douglas v. Middleton, 3 causes.  
 Turner v. Maule, exons.  
 { Baddeley v. Cory }  
 { Ditto v. Curwen }  
 Cuming v. Thrower, fur. dirs. and costs.  
 Hickinbotham v. Cobb.  
 Barton v. Haynes.  
 Havard v. Church.  
 { Att.-General v. Munro. }  
 { Ditto v. Bannerman. }  
 Bass v. Wellstead, exons.  
 Bateman v. Ridge.  
 15 Jan. { Griffin v. James } fur. dirs.  
 { Ditto v. Griffin }  
 15 Jan., Wartzburg v. Cawood, ditto.  
 Shaw v. Fisher.  
 Wich v. Walker, exons.

#### Vice-Chancellor Stigram.

##### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Clare Hall v. Harding, dem.  
 Barker v. Rogers, objection as to parties.  
 11th Jan., Rock v. Callen.  
 Phillipson v. Gatty.  
 Gatty v. Phillipson.  
 11th Jan. { Browne v. Browne } fur. dirs. and  
 { Ditto v. Barstow } costs.  
 Attorney-General v. Ward.  
 To fix { Moor v. Vardon, }  
 a day { Ditto v. Lachlan. }  
 S. O., Parsons v. Muntz, pt. hd.  
 Clementi v. Fielding.  
 11th Jan., Chinnock v. Broom.  
 To fix a day, Gaskell v. Holmes, fur. dirs. and  
 costs.  
 12th Jan., Manser v. Back.  
 11th Jan., Ingersoll v. Kendall.  
 { Elliott v. Lyne } ditto.  
 { Ditto v. Symons, } ditto.  
 Browell v. Reed, ditto.  
 Roberts v. Adams, ditto.  
 Plumley v. Plumley.  
 Wheeldon v. Perkin.  
 Chambers v. Bicknell, fur. dirs.  
 Bates v. Rickerby, ditto.  
 Sayer v. Sayer, exons. and ditto.  
 Gillies v. Longlands.  
 Sutcliffe v. Banks, fur. dirs. and costs.  
 21st Jan., Wragg v. Wragg.  
 Short, Greenwood v. Cleave.  
 Milne v. Parker, fur. dirs. and costs.  
 22nd Jan., Alexander v. Young.  
 { Mackenrop v. Bailey } fur. dirs. and costs.  
 { Ditto v. Brookes } ditto.  
 Sowerby v. Clayton, ditto.

##### Causes transferred from the VICE-CHANCELLOR OF ENGLAND's List on the 12th of January inst.

Rowland v. Morgan.  
 { Edwards v. Joynson }  
 { Ditto v. Jackson }  
 Morgan v. Davies.  
 { Gilbert v. Hodgkiss }  
 { Ditto v. Miller }  
 Lewis v. Smith.  
 Robinson v. Robinson.  
 Seymour v. Hamilton.  
 Sowerby v. Gutteridge.  
 Blackman v. Light.



Rackham v. Siddall.  
 Maddison v. Chappell.  
 Moseley v. Baker.  
 Sandys v. Moylan, 2 causes.  
 Rooke v. Drake.  
 Mores v. Mores.  
 Chambers v. Earl of Mornington.  
 Stutter v. Muston, 4 causes.  
 Viscount St. Vincent v. Hinckley.  
 Kipling v. Fry.  
 { Toft v. Stevenson }  
 { Graham v. Reeves }

## COMMON LAW CAUSE LIST.

## Exchequer of Pleas.

## DEMURRERS.

Hilary Term, 1848.

## For Judgment.

Chamberlain v. The Chester and Birkenhead  
 Railway Company.  
 (Heard 8th May 1847.)

Higgs v. Mortimer.  
 (Heard 17th Nov. 1847.)

Ramsden v. The Manchester South Junction and  
 Altrincham Railway Company.  
 (Heard 17th Nov. 1847.)

Earle v. Oliver.  
 (Heard 1st Dec. 1847.)

Coupland v. Challis.  
 (Heard 7th Dec. 1847.)

Moon v. Durden, jun. (sued, &c.)  
 (Heard 8th Dec. 1847.)

Davis v. Durden, jun., (sued, &c.)  
 (Heard 8th Dec. 1847.)

Ryalls v. Bramall and another, exors.  
 (Heard 8th Dec. 1847.)

## For Argument.

Venables, clk. v. The East India Company.  
 (Part heard 8th Dec. 1847.)

Roret v. E. Lewis.  
 Latimore v. Garrard.  
 Hedley v. Baker, clk.

## SPECIAL CASES.

## For Judgment.

Wilson v. Eden, Bt., and others.  
 (Heard 4th June, 1847.)

Doe d. Knight v. Spencer.  
 (Heard 15th Nov. 1847.)

Lee v. Stone and others.  
 (Heard 15th Nov. 1847.)

Taylor v. Dawson, Esq.  
 (Heard 19th Nov. 1847.)

## For Argument.

Salkeld, clk. v. Johnston and others, by order of  
 the Lord Chancellor.

Marsh v. Davies and others, by order of *Nisi Prius*.  
 South Eastern Railway Company v. Pickford and  
 others, by order of Baron Alderson.

Tobin, Kut, v. Simpson, exor., &c., by order of  
 Justice Erle.

Morgan, admix., &c., v. Jeffreys, by order of  
 Justice Erle.

Moulton and wife, admix., &c., v. Camroux, sec.,  
 &c., special verdict.

Belcher and others, assignees, &c., v. Bellamy  
 and another, exors., &c., by order of Baron Alderson.  
 Hamilton and others v. Spottiswoods, by order  
 of Baron Parke.

Graham and others, assignees, &c., v. Allsopp,  
 by order of Baron Alderson.

Shiell v. Ward and others, by order of *Nisi Prius*.  
 Doe d. Knight v. Samson and others, by order of  
*Nisi Prius*.

Furness and another v. Law, by order of *Nisi  
 Prius*.

The Royal Mail Steam Packet Company v.  
 Acraman and others, by order of *Nisi Prius*.

Regina on the prosecution of Wm. Chaffers v.  
 Good, claiming, &c., demurrer, by rule of court.  
 (Queen's Remembrancer's side.)

Allen v. Sharpe, special case, by order of *Nisi  
 Prius*.

Williams, exor., v. Griffith, special case, by order  
 of *Nisi Prius*.

Fenn v. Gould, special case, by order of Baron  
 Rolfe.

Lamprell v. The Guardians of the Billericay  
 Union, special case on award.

## PEREMPTORY PAPER.

To be called on the first day of the Term, after the  
 motions, and to be proceeded with the next day, if  
 necessary, before the motions.

## Rule Nisi.

22nd Nov., 1847. — Graham and another v.  
 Ingleby and another—Mr. Attorney-General, Mr.  
 Martin.

8th June, 1846. — Henry v. Nash and others, and  
 27 other causes.—Attorney-General, Mr. Martin.

18th Nov., 1847.—Doe sevl. dems. Poole v.  
 Vaughan—Sir F. Thesiger, Mr. Welsby.

16th Nov. 1847.—In the matter of James Richard  
 Thomson, gentleman, one, &c.—Mr. Watson, Mr.  
 Bovill.

16th Nov., 1847. — Montague v. Payne—Mr.  
 Chambers, Mr. Martin.

24th Nov., 1847. — Belfast and County Down  
 Railway Company v. Strange, sen.—Mr. Ogle, Mr.  
 Atkinson.

11th June, 1847.—Harcourt and wife v. Wyman,  
 (pros.)—Mr. Ogle, Mr. Chambers.

11th June, 1847.—Same v. Same, (debt)—Mr.  
 Ogle, Mr. Chambers.

11th June, 1847.—Same v. Same, (covt.)—Mr.  
 Ogle, Mr. Chambers.

11th June, 1847.—Doe d. Same v. Same—Mr.  
 Ogle, Mr. Chambers.

9th Nov., 1847.—Hills and another v. Silcock—  
 Mr. Peacock, Mr. Willes.

1st June, 1847.—Hallett, jun., v. Vigne—Mr.  
 Willes, Mr. Attorney-General.

9th Nov., 1847.—Thomas v. Davies—Mr. Lush,  
 Mr. Gray.

18th Nov. 1847.—Harrison v. Thompson and an-  
 other—Mr. Lush, Mr. Atherton.

9th Nov., 1847.—Shorthose v. Lees—Mr. H. Hill,  
 Mr. Lush.

9th Nov., 1847.—Badham v. Badham—Mr. Gray,  
 Mr. Whitehurst.

## NEW TRIAL PAPER.

## FOR JUDGMENT.

Moved Easter Term, 1847.

London, Lord Chief Baron.—Entwistle and another  
 v. Dent and others—Sir F. Kelly.

(Heard 19th Nov. 1847.)

*London, Lord Chief Baron.*—*Healetine v. Siggers*—*Mr. Crowder.*

(Heard 13th Nov. 1847.)

FOR ARGUMENT.

*Middlesex, Lord Chief Baron.*—*Hitchcock, administrator, &c. v. Beavan*—*Mr. Martin.*

*London, Lord Chief Baron.*—*Mason v. Owen* and others—*Attorney-General.*

*London, Lord Chief Baron.*—*Ralli v. Denistown* and others—*Attorney-General.*

*Liverpool, Mr. Baron Rolfe.*—*Whitwell v. Harrison*—*Mr. Watson.*

*Gloucester, Mr. Justice Maule.*—*Christy* and others (on affidavits) *v. Powell* and others—*Mr. Whateley* for defendant *Pidgeon.*

*Lewes, Lord Chief Justice Wilde.*—*Biddle, executor, &c. v. Biddle.*—*Serjeant Shee.*

*Kingston, Lord Denman.*—*Hooper* and another *v. Williams*—*Serjeant Channell.*

*Kingston, Lord Denman.*—*Boileau v. Rudlin*—*Serjeant Shee.*

*Kingston, Lord Denman.*—*Robinson v. Harman*—*Mr. Chambers.*

*Kingston, Lord Denman.*—*Newry and Euniskillen Railway Company v. Edmonds*—*Mr. Bramwell.*

*Chester, Mr. Justice Coltman.*—*Bates v. Townley* and another—*Mr. Welsby.*

*Chester, Mr. Justice Coltman.*—*Bates v. Townley* and another—*Mr. Townsend.*

*Cardigan, Mr. Justice Wightman.*—*Doe d. Lewis v. Lewis*—*Mr. Benson.*

*Winchester, Mr. Justice Cresswell.*—*Newlyn v. Shadwell*—*Mr. Cockburn.*

*Dorset, Mr. Justice Cresswell.*—*Saint v. Cox*—*Mr. Cockburn.*

*Taunton, Mr. Justice Williams.*—*Wait* and another *v. Baker*—*Mr. Crowder.*

*Taunton, Mr. Justice Williams.*—*Wait* and another *v. Baker.*—*Mr. Butt.*

Moved after the 4th day of Easter Term, 1847.

*Middlesex.*—*Mr. Baron Alderson.*—*Wilkins v. Grant*—*Mr. Crowder.*

*London, Mr. Baron Alderson.*—*Chapman v. Geiger.*—*Mr. Bramwell.*

Moved Trinity Term, 1847.

*Middlesex, Mr. Baron Parke.*—*Manning v. Bailey*—*Mr. Chambers.*

*Middlesex, Mr. Baron Parke.*—*Jacobs v. Hyde*—*Mr. Hake.*

*London, Lord Chief Baron.*—*Chilton v. The London and Croydon Railway Company*—*Mr. Hill.*

Moved Michaelmas Term, 1847.

*Middlesex, Lord Chief Baron.*—*Potez v. Glossop*—*Mr. Cockburn.*

*Middlesex, Lord Chief Baron.*—*Blackett, Ist. Wood*—*Mr. Watson.*

*Middlesex, Mr. Baron Platt.*—*Morley v. Attborough*—*Mr. Martin.*

*London, Lord Chief Baron.*—*Burnside v. Dayrell*—*Mr. Crowder.*

*London, Lord Chief Baron.*—*Same v. Same*—*Mr. Martin.*

*London, Lord Chief Baron.*—*Waller v. Bishop*—*Mr. Crowder.*

*London, Lord Chief Baron.*—*Fraser v. Lochner*—*Mr. Martin.*

*London, Lord Chief Baron.*—*Hennah v. Clark*—*Mr. Humphrey.*

*London, Lord Chief Baron.*—*Percy v. Hopkins*—*Mr. Bramwell.*

*Yorkshire, Lord Chief Baron.*—*Young* and an-

other, assignees, &c. *v. Hope* and others—*Mr. Knowles* for defendants *Anderton* and *Whalley.*

*Yorkshire, Lord Chief Baron.*—*Graburn v. Horberry*—*Mr. Baines.*

*Yorkshire, Lord Chief Baron.*—*Charlesworth v. Walker*—*Mr. Martin.*

*Liverpool, Mr. Justice Wightman.*—*The North and South Shields Ferry Company v. Barker* and others—*Mr. Knowles.*

*Liverpool, Mr. Justice Wightman.*—*Bromilow* and another *v. Saul* and others—*Mr. Martin.*

*Liverpool, Mr. Justice Wightman.*—*Syers v. Jonas* and others—*Mr. Watson.*

*Hertford, Mr. Baron Parke.*—*Weall v. King*—*Mr. Chambers.*

*Chelmsford, Mr. Justice Coltman.*—*Salmon* on affidavit, *v. Cutts*—*Mr. Bramwell.*

*Croydon, Mr. Justice Coltman.*—*Larmuth, (a pauper)* on affidavits, *v. Haslam*—*Mr. Knowles.*

*Croydon, Mr. Justice Coltman.*—*Brown v. Pearson*—*Mr. Lush.*

*Ipswich, Mr. Justice Patteson.*—*Lockett* and another *v. Nicklin*—*Mr. O'Malley.*

*Lincolnshire, Lord Chief Justice Denman.*—*Hobson v. Marshall*—*Mr. Whitehurst.*

*Warwick, Lord Chief Justice Denman.*—*Morgan v. Henth*—*Mr. Martin.*

*Winchester, Lord Chief Justice Wilde.*—*Williams v. Abraham*—*Mr. Cockburn.*

*Winchester, Lord Chief Justice Wilde.*—*Oakley v. Pritchard*—*Mr. M. Smith.*

*Winchester, Lord Chief Justice Wilde.*—*Powell v. Lankester*—*Mr. M. Smith.*

*Exeter, Mr. Justice Williams.*—*Doe d. E. Drake v. Drake* and others—*Mr. Crowder.*

*Exeter, Lord Chief Justice Wilde.*—*Doe d. G. H. Drake v. Drake* and others—*Mr. Crowder.*

*Exeter, Lord Chief Justice Wilde.*—*Marley v. Pincombe*—*Mr. Crowder.*

*Dorset, Mr. Justice Williams.*—*Hitchins v. Macnamara*—*Mr. Crowder.*

*Bridgewater, Mr. Justice Williams.*—*Hibberd v. Knight*—*Mr. Crowder.*

*Bristol, Lord Chief Justice Wilde.*—*Jones v. Simonds*—*Mr. Cockburn.*

*Bristol, Lord Chief Justice Wilde.*—*Challis* and another *v. Wurlters* and others—*Mr. Cockburn.*

*Bristol, Lord Chief Justice Wilde.*—*Same v. Same*—*Mr. Serjeant Kinglake.*

*Bristol, Lord Chief Justice Wilde.*—*Erlam v. Hume*—*Mr. Butt.*

*Bristol, Lord Chief Justice Wilde.*—*Johnson v. Foley*—*Mr. Prideaux.*

*Stafford, Mr. Justice Coleridge.*—*Stagg v. Earl of Miltown*—*Mr. Serjeant Talfourd.*

*Gloucester, Mr. Justice Coleridge.*—*Hulls* and another *v. M'Gachen*—*Mr. Whateley.*

*Gloucester, Mr. Justice Coleridge.*—*Riley, on affidavits, v. Warden* and another—*Mr. Greaves.*

*Ruthin, Mr. Justice Maule.*—*Jones v. Harrison*—*Mr. Townsend.*

*Mold, Mr. Justice Maule.*—*Ball v. Ingham*—*Mr. Townsend.*

*Cardigan, Mr. Justice Cresswell.*—*Lloyd v. Davies*—*Mr. Lush.*

*Brecon, Mr. Justice Cresswell.*—*Powell v. Williams, Esq.*—*Mr. Evans.*

Moved after the 4th day of Michaelmas Term, 1847.

*Middlesex, Mr. Baron Platt.*—*Ballinger v. Sheppard*—*Mr. Petersdorff.*

*Middlesex, Mr. Baron Platt.*—*Maile v. Mann*—*Mr. O'Malley.*

*Middlesex, Mr. Baron Platt.*—*Middleditch v. Ellis*—*Mr. Pashley.*

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 22, 1848.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## PRACTICE RELATING TO THE RETAINERS OF COUNSEL.

OUR readers do not require to be reminded that the Bar collectively has never been referred to in these pages in any other terms but those of profound and unqualified regard and respect, and that we have uniformly contended, to the utmost of our power, against the growing disposition perceptible amongst the community, and evidenced in nearly every species of publication, to disparage and condemn this important and necessary branch of the profession. Our sentiments and intentions in this respect have not undergone, and are not at all likely to undergo, any change; but we cannot, nevertheless, either overlook or approve of the seeming indifference which the Bar as a body manifests, in regard to certain matters in which some consideration for the opinions of others would be at once judicious and becoming. It is not difficult to understand how the government of the Bar is left, by tacit consent, to those whom circumstances have invested with the distinction and authority of leaders, and how the latter—absorbed in the duties arising from the various and complicated interests entrusted to them by clients—reluctantly apply themselves to the consideration of questions affecting the general welfare of the profession. It must be conceded, however, that in the present day no body of men can maintain their position regardless of public opinion, and if the timely interference of those whose authority would be cheerfully submitted to by all classes is not interposed, the regulations and practice of the Bar must be brought more in harmony

with the views of the other branches of the profession and of the community at large, by means as efficacious though not perhaps quite so unobjectionable.

The subject of retainers furnishes a remarkable illustration of the supine apathy to which we have adverted. For some considerable period the unsettled and unsatisfactory state of the practice on this subject has occasioned well-grounded complaints. No one, unacquainted with the matter practically, can conceive the amount of annoyance and vexation to which solicitors and attorneys are subjected from the absence of well-defined and intelligible rules for the government of counsel and their clerks as regards retainers. Each succeeding Term and Circuit furnishes additional instances of novel and unheard of regulations, propounded by the clerks of leading barristers, under the operation of which the counsel is assumed to be absolved from the obligation of continuing to act on behalf of the client whose retainer he had accepted, and at liberty to advocate the cause of the adverse party. The point is mooted, probably for the first time, on the eve of the trial or hearing, at the moment when the briefs are about to be delivered, and the attorney has then the pleasing duty imposed on him, of informing the client that the counsel, selected after much and anxious deliberation, who was consulted on every step in the cause, and was supposed to have mastered its details and prepared himself to conquer its difficulties, had transferred his knowledge, experience, and zeal to the other side. The disappointment, mortification, and indignation, which such an announcement produces is more readily imagined

this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God." (S. 1).

The name of the Sovereign for the time being is to be inserted in the oath (s. 2) ; and the oath is to be taken in like manner as Jews are now sworn. (s. 3.)

By the 4th clause, this oath shall be administered to her Majesty's subjects professing the Jewish religion in manner aforesaid, at the same time, and by the same officers, or other persons, as the oath for which it is hereby substituted is or may be now by law administered ; and that in all cases in which a certificate of the taking, making, or subscribing of the first-mentioned oath of abjuration is directed to be given, a like certificate of the taking or subscribing of the oath hereby appointed and set forth instead thereof shall be given by the same officer or other person, and in the same manner as the certificate now required by law is directed to be given, and shall be of the like force and effect ; and the officers or other persons who are required by any act now in force to administer the first-mentioned oath of abjuration, and grant certificates thereof, shall be sworn duly to administer and grant certificates of the oath hereby appointed and set forth instead thereof.

By the 9 Geo. 4, c. 17, "for repealing so much of several acts as imposes the necessity of receiving the sacrament of the Lord's Supper as a qualification for certain offices and employments," a certain declaration is prescribed to be taken in the cases in that act mentioned : And by 8 & 9 Vict. c. 52, "for the relief of persons of the Jewish religion elected to municipal offices," a certain other declaration was permitted to be taken in certain cases by persons professing the Jewish religion, instead of the declaration required to be made and subscribed by the act of 9 Geo. 4, c. 17 : it is now proposed to extend the benefit of the last-recited act to all other cases in which the declaration set forth in the act of the 8 & 9 Geo. 4 is by law required to be taken.

By the 6th clause the act is not to extend to enable any person professing the Jewish religion to hold or exercise the office of guardians and justices of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style, or title such office may be constituted, or to enable any person to hold or enjoy the

the

Keel  
Sea: of Great Britain or Ireland, or the office of  
of  
G

Maj.

Assembly of the Church of Scotland.

And the 7th clause provides, that the act shall not enable any persons, otherwise than they are

now by law enabled, to hold, enjoy, or exercise any office, place, or dignity of, in, or belonging to the United Church of England and Ireland, or the Church of Scotland, or any place or office whatever of, in, or belonging to any of the Ecclesiastical Courts of Judicature in England and Ireland respectively, or any Court of Appeal from or review of the sentence of such courts, or of, in, or belonging to the Commissary Court of Edinburgh, or of, in, or belonging to any cathedral or collegiate or ecclesiastical establishment or foundation, or any office or place whatever of, in, or belonging to any of the Universities of the realm, or any office or place whatever, and by whatever name the same may be called, of, in, or belonging to any of the colleges or halls of the said Universities, or the colleges of Eton, Westminster, or Winchester, or any college or school within this realm, or to repeal, abrogate, or in any manner, to interfere with any local statute, ordinance or rule which is or shall be established by competent authority within any university, college, hall, or school, by which Jews shall be prevented from being admitted thereto, or from residing or taking degrees therein ; and that nothing therein contained shall extend to enable any person, otherwise than as he is now by law enabled, to exercise any right of presentation to any ecclesiastical benefice whatsoever, or to repeal, vary, or alter in any manner the laws now in force in respect to the right of presentation to any ecclesiastical benefice whatever.

The 8th clause also enacts, That where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of her Majesty, her heirs or successors, and such office shall be held by a person professing the Jewish religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being.

So, also, by the 9th section, no person professing the Jewish religion shall directly or indirectly advise her Majesty, her heirs or successors, or any person or persons holding or exercising the office of guardians of the United Kingdom, or of Regent of the United Kingdom, under whatever name, style, or title such office may be constituted, or the Lord Lieutenant or Lord Deputy, or other Chief Governor or Governors of Ireland, touching or concerning the appointment to, or disposal of, any office or preferment in the United Church of England and Ireland, or in the Church of Scotland.

## NOTICES OF NEW BOOKS.

*Chancery, with Notices of their Ancient Customs, and Entertainments ; including an Account of the Eminent Men of the Four Learned and Honourable Societies,—Lincoln's Inn,*

*the Inner Temple, the Middle Temple, and Gray's Inn, &c., &c.* By ROBERT R. PEARCE, Esq., of Gray's Inn, Barrister-at-Law. London: Bentley, New Burlington Street, and Butterworth, Fleet Street. 1848. Pp. 440.

MANY circumstances have of late combined to direct the attention, as well of the public as of the profession, to the constitution, history, and present state of the Inns of Court. Mr. Pearce's book on this subject is therefore well-timed. Dugdale's *Origines Juridicales* is well known to be the great authority to which all modern writers on the Inns of Court must have recourse. In 1790, there was a publication called "Historical Memorials of the English Laws and the Inns of Court," which was mainly a reprint of Dugdale. The work, however, most commonly referred to, before the present publication, is "Herbert's Antiquities of the Inns of Court and Chancery," of which one edition only appears to have been published, in 1804, accompanied by several embellishments. The preliminary part of that work comprised the Antiquities of the Common Law of England; the judges, lawyers, and the various inferior courts; the four great courts; the creation, salaries, &c., of the judges of Westminster Hall; the ancient modes of trial and punishment; the Terms, fines, &c. The compiler then entered upon the origin and customs of the several Inns of Court and Chancery: treating of their history; their manner of enforcing study; their regulations of diet, apparel, pastimes; their various usages; their eminent men; and the several Inns of Chancery attached to each of the greater Inns; concluding with Serjeants' Inn and the antiquity and dignity of that ancient order of lawyers.

Mr. Pearce has differently arranged the materials of his work, and the following is a statement of the subjects of his several chapters:—

1. Early schools of law in England.
2. Sites of the Inns of Court.
3. Constitution of the Inns of Court.
4. Ancient readings of the Inns of Court.
5. Inns of Court Masques.
6. Revels.
7. Lincoln's Inn. Early history. Ancient orders and customs. Eminent men.—Furnival's Inn and Thavie's Inn.
8. Inner Temple. Early history. Ancient customs. Eminent men.—Clifford's Inn.—Clement's Inn.—Lyon's Inn.
9. Middle Temple. Ancient rules, orders, and customs. Eminent men. Lectures.—New Inn.

10. Gray's Inn. Early history.—Ancient orders and customs.—Eminent men.—Staple Inn.—Barnard's Inn.

11. Regulations of the four Inns of Court. Admission of students.—Keeping terms.—Exercises.—Call to the Bar.—Refusal to call to the Bar.—Screening.—Expulsion and disbarring.—Appeal.

12. Degrees in the Inns of Court.

The author has, we believe, furnished every authentic particular of any importance relative to the early history of the Inns of Court and Chancery. He appears to have availed himself of all the early authorities referred to, and such statutes and records as illustrate the subject. We understand, also, that he has had the advantage of consulting such manuscript collections as contained any information bearing on the matters comprised in the work. He has very properly collected as copious an account as practicable of the ancient readings in the four Inns,—conceiving that an exhibition of those readings cannot fail to stimulate the cause of legal education, to which, as he observes, attention has now become alive. We shall on the present occasion pass over the chapters on Masques and Revels, and place before our readers an account of the Studies of our legal ancestors:—

"In ancient times the studies in the Inns of Court were classified in the following manner:—

|          |                    |   |  |
|----------|--------------------|---|--|
| Touching | Exercises,<br>viz. | { Readings<br>in the<br>Moots<br>in the                               | { House.<br>Inns of Chancery.<br>Hall.<br>Library. |
|          | Degrees,<br>viz.   | { { Bolts.<br>Cases assigned.<br>Readers.<br>Ancients.<br>Barristers. |  |

"The readings were, from the very foundation of these seminaries, looked upon as a vital part of their constitution. They were delivered in the halls with great solemnity and dignity, and were not only adapted for the improvement of the students who resorted thither, as Fortescue expresses it, to study the grounds and the originals of the law, but formed a most valuable guide to the more advanced professor in his daily practice, and, being the composition of men experienced in the profession, of tested abilities, who felt it a point of honour to maintain the reputation of their respective inns, they were regarded as authorities, and were cited as expositions of the law in argument at Westminster Hall, where some of them, in our own day, continue to be respected. Some important statute, or section of a statute, was selected by the reader, who analysed every member of it, explained its provision, and exhausted the whole subject,—pointing out its relation to the common law, and illustrating his argument by apposite cases. Lord Coke notes the following five excellent qualities in the ancient

**readings** :—“ First, they declared what the common law was before the making of the statute ; secondly, they opened the true sense and meaning of the statute ; thirdly, their cases were brief, having at most one point at the common law and another upon the statute ; fourthly, plain and perspicuous, for the honour of the reader was to excel others in authorities, arguments, and reasons for proof of his opinions and for confutation of the objections against it ; fifthly, they read to suppress subtle inventions to creep out of the statute.”

Mr. Pearce enumerates many of these readings on statutes which deserve to be remembered, and most of which are still extant. He then refers to the following account from Stow :—

“ The benchers appoint the eldest utter-barrister to read amongst them openly in the hall, of which he hath notice half a year before. The first day he makes choice of some act or statute whereupon he grounds his whole reading for that vacation. He reciteth certain doubts and questions which he hath devised upon the said statute, and declares his judgment thereon. After which, one of the utter-barristers repeateth one question propounded by the reader, and by way of argument doth labour to prove the reader's opinion to be against law. And after him, the senior utter-barrister and reader, one after another do declare their opinions and judgments in the same. And then the reader who did put the case, endeavours to confute the objections laid against him, and to confirm his own opinion. After which, the judges and serjeants, if any there be, declare their opinions. Then the youngest utter-barrister again rehearseth another case, which is prosecuted as the former was. And this exercise continueth daily three or four hours. The manner of reading both in Lent and Summer vacations, are performed after the same manner ; and usually out of those readers the serjeants are chosen.”

The manner of mootings in the Inns of Court and Chancery are also thus given by Stow :—

“ In these vacations after supper, in the hall, the reader, with one or two of the benchers, comes in, to whom one of the utter-barristers propounds some doubtful case, which, being argued by the benchers, and lastly, by him that moved the case, the benchers sit down on the bench at the upper end of the hall ; and upon the form in the middle of the hall sit two utter-barristers ; and on both sides of them, on the same form, sits one inner-barrister, who in law French doth declare to the benchers some kind of action ; the one being as it were retained for the plaintiff, and the other for the defendant : which ended, the two utter-barristers argue such questions as are disputable within the said case ; after which, the benchers

do likewise declare their opinions, as how they take the law to be in these questions.”\*

Mr. Pearce, towards the conclusion of this part of his work, observes that

“ It would obviously tend very much to invigorate the Inns of Court, to promote their utility, extend the benefits of the newly-established lectures, and restore the ancient discipline of these houses, if an experienced special pleader and conveyancer, or equity draughtsman, were appointed by the bench in each Inn at liberal salaries, with liberty to practise at their discretion ; every student being obliged (unless under very special circumstances) to attend the chambers of either of such pleaders or conveyancers for one year, paying the sum of fifty guineas to the funds of the society ; an examination being held once a year, and a certain number of successful candidates receiving back the fee paid on entering upon this course of study.

“ In the time of Fortescue, temp. Hen. 6, there seems to have been then about 1,800 or 2,000 students in the Inns of Court and Chancery. ‘ For,’ he says, ‘ there be ten lesser houses or inns, and sometimes more, which are called Inns of Chancery. And to every one of them belongeth a hundred students, at the least, and to some of them a much greater number, though they be not ever all together in the same. Those students, for the most part of them, are young men, learning or studying the originals, and as it were, the elements of the law, who, profiting therein as they grow to ripeness, are admitted into the greater inns of the same study, called the Inns of Court, of which greater inns there are four in number. And to the least of them belongeth in form above-mentioned, 200 students, or there about.’ ”

The rules and orders now in force respecting the admission of members, keeping Terms, and calling to the bar, have been ascertained, as we are assured, from official documents and personal inquiry in the treasurers' and stewards' offices of the several societies, and Mr. Pearce states he has derived important assistance from the

\* “ Sir Symonds d'Ewes gives a particular account of the mootings and exercises performed by him during his period of study in the Middle Temple. ‘ I had twice mooted in law French before I was called to the bar, and several times after I was made an utter-barrister, in our open hall. Thrice also before I was of the bar, I argued the reader's cases at the Inns of Chancery publicly, and six times afterwards. And then also, being an utter-barrister, I had twice argued our Middle Temple reader's case at the cup-board, and sat nine times in our hall at the bench, and argued such cases in English as had before been argued by young gentlemen or utter-barristers in law French bareheaded.’ ”

registers of the Inns in his researches respecting their eminent men, which form, he justly says, as illustrious a gallery as any university of Europe. It is also proper to add that the author has stated the substance of every case of importance decided in the Superior Courts respecting the jurisdiction, powers, and privileges of these societies, as well as all the remarkable cases illustrative of the internal discipline of the Inns of Court.

## LAW OF WILLS.

1 Vict. c. 26, s. 9.

### EXECUTION AND ATTESTATION.

The 1 Vict. c. 26, sec. 9, enacts "that no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary."

By this clause, five requisites are rendered necessary to constitute a verbal will, and which includes (sect. 1) a testament and codicil; 1st, it must be in writing; 2nd, signed by the testator, or by some other person in his presence and by his direction; 3rd, at the foot or end; 4th, the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and 5th, the witnesses must attest and subscribe the will in the presence of the testator; and, although not expressly required by the statute, a sixth formality must be observed, viz. the witnesses must not only subscribe in the presence of the testator, but also in the presence of each other.

I. A will must be in writing.

This applies to all wills except those of soldiers and mariners, which are excepted by sec. 11. The word *writing* is used in the most extensive sense in contradiction to verbal, and not in its limited meaning of handwriting. It includes, therefore, printing, lithography, &c. Wills partly printed, and partly written, are constantly admitted to probate. 3 Cur. 29, Id. 754; 5 No. Ca. 406.

II. It must be signed by the testator, or by some other person in his presence and by his direction.

1. Signature by mark is sufficient. In *Goods of Field*, 3 Cur. 752, although the testator may be able to write his name, and the court will not inquire into his capacity to do so. *Taylor v. Draving*, 3 Nev. & P. 228, S. C., 16 L. O. 475; and although the testator's name does not appear on the face of the will. In *Goods of Bryce*, 2 Cur. 325. A signature by mark, the testator's hand being guided by another person is sufficient under the Statute of Frauds,

*Wilson v. Beddard*, 12 Sim. 28; and from that and an analogous case, *Harrison v. Edwin*, 3 Ad. & E. N. S. 117, S. C. 27, L. O. 290, it may be inferred it would be sufficient also under this act.

When a will is signed by mark, it is expedient that the witnesses should ascertain that the testator knew and understood the contents; and where there is no objection to such a course, the will should be read over to the testator in their presence. If the attestation be in the proper form, and there be no opposition, the Prerogative Court will grant probate without inquiry on these points; but if the proof be opposed, evidence will be necessary that the deceased understood the contents of the will.

2. The signature may be made by another person, if done by the direction of the testator and in his presence. If the agent sign *his own* name instead of the testator's, it will be sufficient. In *Goods of Clark*, 2 Cur. 330. In that case the will was signed thus:—"Signed on behalf of the testator, in his presence and by his direction, by me, C. F. Furlong, Vicar of Warfield, Bucks." And the attestation was:—"The above signature was made for and acknowledged by the testator, in the presence of us whose names are hereto subscribed,—Mary Butler, X her mark, Ann Clark." Sir H. Jenner held, that the act had been sufficiently complied with, remarking, "The statute allows a will to be signed for the testator by another person, and it does not say that the signature must be in the testator's name."

The signature will be sufficient, although the agent be one of the attesting witnesses. This was first decided in the *Goods of Bailey*, 1 Cur. 914, but being an *ex parte* case, and Mr. Henry Sugden, in his treatise on the act previously to its coming into operation, having expressed his opinion against the validity of a will so executed, the decision was not considered satisfactory. The point arose again in *Smith v. Harris*, 4 No. Ca. 48, and, after a full discussion, the decision in *Bailey's* case was confirmed.

If the testator be totally, or almost blind, the court will not grant probate without being satisfied that the will is conformable to the instructions and intentions of the deceased. But it is not necessary to read the will to the testator in the presence of the witnesses before it is signed, (*Fincham v. Edwards*, 3 Cur. 63,) although, where the circumstances will allow, it is prudent to do so.

III. The signature must be at the foot or end.

Numerous questions have arisen as to whether a will was signed at the foot or end, but as almost every case turns on circumstances peculiar to itself, it is not easy to draw any general rules from the decisions. It will be convenient, however, to divide them into classes, and we shall therefore consider—1. The effect of a blank between the end of the will and the

signature; 2. The effect of the whole or part of a clause being written below the signature, or on a page subsequent to that on which the signature is made; and 3. The sufficiency of a signature written in the attestation or *testimonium* clause.

1. In considering whether a will in which there is a blank between the end and the signature of the testator is signed at the foot or end, the court look in the first instance to the intention of the deceased, and if it appear that he left the blank intentionally, in order that he might make additions to the will, it will be invalid. In *Goods of Scarlett*, 4 No. Ca. 480, *Ward v. Lambert and another*, 5 No. Ca. 447. But if the blank appear to have been left by accident, as if the testator have been misled by a printed form, (in *Goods of Carver*, 3 Cur. 29,) or if the whole of the property be disposed of, so that there is no reason to apprehend that the deceased intended to make any further bequest (in *Goods of Gore*, 3 Cur. 758), the signature will be sufficient. Where a will was written on the first and third sides of a sheet of paper, the whole of the disposition and the date, with the attestation clause ending at the bottom of the third side, so as not to leave sufficient room there for the signatures of the deceased and of the two witnesses, they being written at the lower part of the second side of the paper, which otherwise would have been blank, it was held a good execution. In *Goods of Gardiner*, 2 No. Ca. 459. But where the whole of the disposing part was written in the first page, the upper part of the second page was blank, and on the lower part was the *testimonium* clause, and the signatures of the testator and the witnesses, and there were several unattested alterations in the will, and it could not be ascertained whether they were made before or after the execution, probate was refused. *Ayres v. Ayres*, 5 No. Ca. 375.

2. If the whole of a clause be written below the signature, it is necessarily rejected as being no part of the will, otherwise the whole will would be invalid, since if the clause were held to form a part of the will, then the will would not be signed at the foot or end. In *Goods of Howell*, 2 Cur. 342. In *Goods of Davis*, 3 Cur. 748. The decisions on the cases where part of a clause is above and a part below the signature, are not easily reconciled. In *Goods of Powell*, 4 No. Ca. 391, the testatrix signed by mark under the *testimonium* clause, the witnesses' names being subscribed immediately below her mark. Opposite to her signature and the names of the witnesses, a clause was commenced and continued below and underneath them. The whole will, including the last-mentioned clause, was written before the will was executed. Sir H. J. Fust said, "Her signature is not at the foot of the will, but I cannot say it is not at the end, according to my construction of the act, for when the clause was added at the end of the paper, there was no room for anything else, and she then made her mark. The mark was not made at the foot, but was it not made at the end of the

will? I cannot help thinking that is a compliance with the act. All these cases depend very much upon their own peculiar circumstances."

But where a will was signed at the end of the disposing part, and the appointment of executors was written in the margin, vertically at right angles with the body of the will and reaching below the signature, the court rejected the clause on the ground that there was no signature at the bottom of it. In *Goods of Tookey*, 5 No. Ca. 386.

This decision seems to have turned entirely on the circumstance of the clause coming below the signature, the unusual position of it appearing to be of no consequence. A clause appointing executors being written across a will, the whole clause being above the signature, was held good, it being satisfactorily proved to have been written before the will was executed. 5 No. Ca. 406.

The decision in *Powell's* case relied upon in *Goods of Mary Jones*, 4 No. Ca. 532, where the will being written on the first and second pages, and the testatrix's signature and the attestation by the witnesses at the end of the second, a clause was added on the third side, but Sir H. Jenner Fust refused to admit the clause, although he said if there had been any reference to it in the body of the will, he would have done so, and he remarked that in *Powell's* case the court strained a point, and had gone as far as it could go.

Sir H. Jenner Fust's observations in *Mary Jones's* case, that if in the body of the will a reference had been made to the clause, he would have admitted it, must not be relied on, for he has himself expressly refused to admit clauses so referred to. In *Goods of Parslow*, 5 No. Ca. 112. The deceased wishing to make his will, produced a lithographed form to G. A., and requested him to write to his dictation. G. A. accordingly proceeded to fill up the blanks, but the testator being desirous to give some further legacies, and there not being sufficient room on the first side of the paper, G. A. opened the sheet, and wrote various bequests on the second and third pages, and then made a reference by an asterisk in the margin of the first page, (meaning to refer to the writing on the second and third pages,) and also a corresponding reference at the end of the third page. He read all he had so written, and pointed out the references to the testator, who expressed himself perfectly satisfied, and took possession of the paper. At a subsequent period he produced it to G. A. and two other persons, and requested them to witness the execution thereof by him, at the same time pointing out to them the writing on the second and third pages, and also the reference to it on the third page, and then signed his name at the end of the first page, the witnesses also subscribing on the same page. After recapitulating the circumstances, Sir H. J. Fust said, speaking of the writing on the second and third pages, "There is no signature to this part of the will except *referendo*. How is it



possible I can say this paper is signed at the foot or end, and pronounce that the second and third pages form part of the will? I cannot put such a construction upon the act." Probate was refused, not of the second and third pages only, but of the whole, on the ground that it was clear the first page alone did not contain the testator's meaning.

Where a will was written on the first and third sides of a sheet of paper, and the attestation clause was written on the lower part of the second side (the upper part being blank,) and the signatures of the testator and the witnesses were placed beneath it, it was held sufficient, although there was room at the foot of the third side for the deceased to sign, Sir H. Jenner Fust remarking that the signature, "Thomas Baker," was parallel with the last line, and the second page might be considered as a wide margin. In goods of Baker, 3 No. Ca. 162).

3. Testators have sometimes written their names in the attestation or *testimonium* clause, and have not otherwise signed the will, and as the name in such case is generally in the proper place, viz. at the foot or end of the will, the only question is whether it was intended for a signature, and this can of course only be determined by the circumstances in each case. Where the testatrix concluded her will thus: "Signed and sealed as and for the will of me, C. E. T. W., in the presence of us, T. H., E. H.," it was held a good signature. In Goods of Wordington, 2 Cur. 324. But where the testator wrote, "Signed by the within named J. C.," &c. it was considered not sufficient, and the court said it was distinguished from Wordington's case by being in the third person, whereas in that case the words were, "of me," in the first person, which were very important. In Goods of Chaplyn, 4 No. Ca. 469. The testator's name was written in the attestation clause, which commenced "Signed, published, and acknowledged by the said L. D.;" and the witnesses stated she wrote her name there, as they believed, at the time they attested the execution; but it appearing that she had on previous occasions signed her name in the proper manner at the foot of a will, and of a codicil, the latter commencing and concluding in the same way as the one in question, Sir H. Jenner Fust decided he could not assume the name was intended for her signature. In Goods of Davis, 4 No. Ca. 522. And where the attestation clause was in the third person, and the witnesses differed as to whether the testator did or did not sign his name there when they attested the will, the court refused probate. In Goods of Atkins, 4 No. Ca. 564.

A will concluded in this manner:—"In witness hereof I have hereunto set my hand and seal,—Jane Randolph Gunning; this 25th day of September, 1845." Then followed the attestation clause, not as usual, in the margin, but as a new consecutive clause of the will. The deceased did not write her name in the presence of the witnesses, but produced the paper, stating it was her will, and requested

them to witness it. The whole was in the deceased's handwriting. The court held the will to be duly executed, remarking, in reference to the conclusion "In witness whereof I have hereunto set my hand," that she could have meant only that the name "Jane Randolph Gunning," which followed, was her "hand." In Goods of Gunning, 5 No. Ca. 75.

[To be concluded in our next.]

## PARLIAMENTARY RETURNS.

### FEES OF COURTS OF EQUITY.

THE returns, made to the House of Commons on the 16th July last, and which have just been printed, comprise the fees received by the officers of the several Courts of Law and Equity. We shall, for the present, extract those of the Court of Chancery, amounting to £168,733 1s. 9½d.; besides which large sums are drawn out of the dividends arising on the suitors' fund, and to which we shall hereafter advert.

|   |        |    |    |
|---|--------|----|----|
| Accountant-General . . .                | £5,392 | 11 | 6½ |
| Masters in Chancery :                   |        |    |    |
| Dowdeswell . . .                        | £3,662 | 5  | 9  |
| Wingfield . . .                         | 4,245  | 10 | 6  |
| Farrer . . .                            | 4,369  | 8  | 4½ |
| Giffin Wilson . . .                     | 3,580  | 15 | 10 |
| Brougham . . .                          | 2,995  | 2  | 4  |
| Senior . . .                            | 4,055  | 6  | 7  |
| Lynch . . .                             | 4,052  | 16 | 11 |
| Duckworth . . .                         | 3,925  | 17 | 2  |
| Horne . . .                             | 4,179  | 17 | 0  |
| Rose . . .                              | 4,665  | 11 | 4  |
| Richards . . .                          | 2,513  | 7  | 10 |
|   | 42,245 | 19 | 7½ |
| Clerk of the public office . . .        | 2,477  | 19 | 10 |
| Taxing masters :                        |        |    |    |
| Baines . . .                            | 4,331  | 2  | 5  |
| Follett . . .                           | 4,448  | 13 | 1  |
| Gatty . . .                             | 4,026  | 16 | 5  |
| Martineau . . .                         | 4,823  | 0  | 6  |
| Mills . . .                             | 4,724  | 1  | 1  |
| Wainwright . . .                        | 5,298  | 0  | 5  |
|   | 27,651 | 13 | 11 |
| Records and writs office . . .          | 23,479 | 10 | 6  |
| Clerk of inrolments . . .               | 6,954  | 10 | 1  |
| Registrars' office . . .                | 16,557 | 4  | 6  |
| Bagbearer to Registrars of Court        |        |    |    |
| of Chancery . . .                       | 265    | 19 | 8  |
| Office of reports and entries . . .     | 8,346  | 14 | 0  |
| Crown office . . .                      | 165    | 13 | 2  |
| Affidavit office . . .                  | 6,554  | 18 | 4  |
| Hanapar office . . .                    | 4,501  | 8  | 6½ |
| Examiners' office :                     |        |    |    |
| Plumer . . .                            | 799    | 11 | 8  |
| Villiers . . .                          | 991    | 2  | 10 |
|   | 1,790  | 14 | 6  |
| Petty bag office . . .                  | 1,443  | 9  | 9  |
| Subpoena office . . .                   | 1,320  | 12 | 0  |
| Principal Sec. to Lord Chancellor . . . | 2,933  | 5  | 0  |
| Secretary of decrees . . .              | 34     | 15 | 0  |
| Deputy secretary of decrees . . .       | 14     | 7  | 9  |
| Secretary of lunatics . . .             | 3,132  | 14 | 2  |
| Solicitor to suitors' fund . . .        | —      | —  | —  |
| Clerk of the patents . . .              | 923    | 7  | 0  |
| Masters in lunacy . . .                 | 3,245  | 18 | 7  |
| Chaffer of wax . . .                    | 646    | 14 | 8  |

|   |          |    |    |
|---|----------|----|----|
| Deputy chaffer of wax . . . . .   | £513     | 14 | 9  |
| Sealer . . . . .  | 310      | 11 | 0  |
| Deputy sealer . . . . .   | 236      | 0  | 3  |
| Sergeant at arms to Lord Chancellor . . . . .   | —        | —  | —  |
| Usher of the hall . . . . .   | 300      | 0  | 0  |
| Crier of Court of Chancery . . . . .  | 330      | 16 | 8  |
| Usher of the court . . . . .  | 121      | 10 | 0  |
| Doorkeeper . . . . .  | 3,218    | 8  | 1  |
| Court keeper . . . . .  |          |    |    |
| Tipstaff . . . . .  |          |    |    |
| Porter to Great Seal and Usher to the Lord Chancellor's Court . . . . .   |          |    |    |
| Ushers . . . . .  |          |    |    |
| [These officers are partly paid out of the fees received by the doorkeeper, and partly by salary from the suitors' fund.] |          |    |    |
| Rolls Court [exclusive of fees received at the registrars' office] . . . . .  | 3,632    | 6  | 0  |
| Vice-Chancellors' Courts . . . . .  |          |    |    |
| [The fees received on the decrees and orders of the Vice-Chancellors are included in the return from the Registrars.]     |          |    |    |
|   | £168,733 | 1  | 9½ |

## THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

In another part of this number will be found the reports of the Manchester Law Association, and the Provincial Law Societies' Association. Being desirous to add a statement of the recent proceedings of the Metropolitan and Provincial Law Association, and its present state, we cannot resort to a better source than the speech made at the meeting at Manchester on the 13th instant, by Mr. John Hope Shaw, of Leeds, one of the deputy chairmen of the committee of management of the new association.

“Mr. Shaw said, that the association consisted of a union of between 900 and 1,000 gentlemen of highly-intelligent minds, very independent habits of thought, many of them strangers to each other, both in person and by name; little accustomed, hitherto, to habits of co-operation; and what (he asked) could have induced them thus to unite, but the paramount and overwhelming sense of the necessity of forming such a body? It was to that sense of its necessity, and not to the exertions of individuals, that its existence was owing. Like all other law societies, it had two objects in view,—one, the regulation and discipline of the profession itself; and the other—(unhappily forced upon the profession by the course of modern legislation, and a series of measures which, one by one, were depriving them of the rights and privileges to which they were entitled to look forward on

embracing the profession, and tending to lower that profession in the scale of social importance, and, if not checked in time, to lower the independence and station of its members)—to oppose encroachments and injuries which nothing but a general union among the members of the profession could effectually resist.

“To such feelings and necessities all law societies owe their origin,—first arose the Manchester Association; then, the feeling being carried a little farther, produced the Provincial Association; and a little farther still, the Metropolitan and Provincial Society, which, he trusted, united the solicitors in London and the provinces, for the improvement of their own profession, and at the same time for the maintenance of its just rights and privileges. Of the members of that association, 600 were provincial, and 300 London solicitors,—a small number compared with those expected ultimately to join it, but still sufficient to command a large influence, and to comprise many of the leading members of the profession in town and country.

“That body was now directing attention to an extensive and systematic inquiry into all those topics, both of public and professional interest, on which it might be fit for it, within any reasonable time, to lay the result of its considerations before the legislature. Committees appointed to inquire and report upon the procedure in the various courts of common law, and upon the practice of conveyancing, and also upon that particular part of the practice of legislation; and, of course, committees had also been appointed to inquire into those matters more immediately concerning the profession, but which really concerned the public as much as the profession—he meant the rights and station of their own body, and the place which it ought to occupy in the administration of justice. Those committees had received instruction (upon which he doubted not they would faithfully act) to take every possible means to ascertain and collect the general opinion of the profession at large, before they ventured to commit the society to any particular conclusions or measures, or to pledge themselves to the course they would take in operation with the legislature. Their first request to the profession was, that they would favour the society, through its committees, with the results, formed on experience, inquiries, and reflection upon the various subjects upon which inquiries would very soon be circulated among them; the committees' business being to digest those returns, and draw right and sound conclusions from the whole.

“Another object of the association (which he mentioned specially, as liable to be misunderstood) was to encourage and extend local law societies. A notion had prevailed in some quarters, that the tendency of a general association was to affect the importance of local associations, and indirectly to discourage them. Now, it ought to have, and he trusted it would have, and he was sure it was the wish of its promoters that it should have, a diametrically

opposite tendency. There was no one thing about which they were more zealous, or on which they laid greater stress, than that associations like this of Manchester, on a scale proportionate to the population and importance of the place, but like this in principle, general utility, and, as far as may be, in talent, should be formed in every large town and district in the kingdom.

"To such societies the Metropolitan and Provincial Association looked for support,—not in a pecuniary sense, but as affording the best means of forming and maturing a sound public opinion in the profession, and as conveying to the general body those opinions by which they might be regulated. The profession in the north of England had been accustomed to regard Manchester (and, from the proximity and the cordiality which existed between the profession of Liverpool and Manchester, they might be regarded as one town) as the legal metropolis of the north; and it would have been to him a subject of deep regret, which would have prevented him encouraging a metropolitan and provincial association, if he could have imagined that a pre-eminence so justly due to Manchester, would be in the slightest degree dimmed or overshadowed by the formation of the larger body. He was certain from the first that it could have no such intention or effect; and a proof of that was, that the larger body had appointed a gentleman of Manchester as one of its secretaries, and had recommended—and, in fact, directed—that the members of the associations resident within the northern circuit should be formed into a district, of which Manchester, as it was the residence of the secretary, would naturally be the centre; and this city would certainly remain, as it had hitherto been, a place to which the whole profession in the north of England would look as the centre of their operations,—their metropolis.

"He entirely concurred in the view that the public were deeply interested in the success of these associations, and only on such views should he have felt justified in promoting the formation and encouragement of such societies; but he believed the public were interested far more than the members of the profession. They were deeply interested in a good system of discipline within this body, which formed the best security against the abuse of the vast powers necessarily entrusted to their hands. The public were not less interested in measures for justly maintaining the profession in that position in society, without which it were vain to hope that able and high-minded men would long continue to belong to it. The public were also interested in the improvement and maintenance of professional education,—one of the great objects of all societies throughout the country, and which was necessary to secure the benefit of a succession of well-qualified members, worthy of public confidence. He believed all the law societies—and the Manchester one had generally led the way in improvements of this kind—had already in no

slight degree tended towards the attainment of those objects; and in the belief that the Metropolitan and Provincial Society would further and second, and still more powerfully contribute to those objects, he considered it fully entitled to the cordial support of every member of the profession."

## PROVINCIAL LAW SOCIETIES ASSOCIATION.

THE members of this association held their third annual meeting at the Manchester Law Association's rooms, on Thursday the 13th inst.; *John Hope Shaw, Esq.*, of Leeds, in the chair.

*Mr. Thomas Taylor*, the Honorary Secretary, read the following report:—

"The committee of this association have again the pleasure to present a report of their proceedings during the year which has now expired, and in doing so, it affords them no ordinary gratification to state that, during the last twelve months, an object has been achieved which forms an era in the history of the profession, and which they are sanguine enough to expect will result in the adoption of measures beneficial alike to the public and themselves, in a greater degree than has ever heretofore been secured, or than could have been attained through the medium of any other instrumentality. Your committee's predecessors in office adverted in their report, presented at the last annual meeting, to certain "acts of aggression and attempts at depreciation" with which the profession had been assailed, both within the walls of parliament and by the public press on a then recent occasion; and they directed the attention of the meeting to communications received from various societies in the kingdom in connection with this association evidencing a strong and general feeling of the injustice of these attempts, and announced that a negotiation was then pending with a view to the formation of an union between metropolitan and provincial practitioners, on a comprehensive scale, for the purpose of asserting and maintaining the true position of the branch of the profession to which we belong, and of securing the means of adequate defence against attacks of this character, as well as for other objects, in the attainment of which the public were as much interested as themselves.

"Your committee have now to state that this negotiation resulted in a meeting in February last, in the council room of the Incorporated Law Society, between a deputation, consisting of fourteen gentlemen, who represented various provincial societies in connection with this association, and a large and influential body of metropolitan solicitors; at which the statements made by the deputation received much attention from their London brethren, and met with their cordial concurrence. Measures were speedily adopted to effect an union between the members of the profession in London and the provinces, for the purposes adverted to; and

in the month of April, "The Metropolitan and Provincial Law Association" was formed as the fruit of this meeting. The association thus formed, has since been conducted by a committee of management then appointed, on such principles, and seeking the accomplishment of such objects, as must commend it to the countenance and support of every solicitor in the kingdom who seeks either the interests of his clients by the more effective and economical administration of justice, or the protection of his own just rights.

"In the course of a few weeks after the formation of the association, the committee of management prepared and published an address to their professional brethren, as able as it was lucid, in which they directed attention to the present character and condition of the profession, their exclusion from offices of honourable distinction and from the Inns of Court, the invasion of their rights to act as advocates, and in other capacities strictly and properly within the sphere of their duties; the unjust and unequal taxation exclusively imposed upon them; and to other facts which seriously affect their position and tend to lower it in the opinion of the public. They also directed the attention of the profession to the importance of securing improvements in legal education, and in attainments in general literature, on the part of the candidate, as a means of raising the intellectual character and legal efficiency of the whole body, and thus affording an additional guarantee for their standing and their claims upon public confidence.

"Your committee cordially concur in these views and objects, and would suggest to their successors in office the importance of continuing their countenance and aid to an association actuated by such motives, and seeking to accomplish such ends, and which now comprises a large and influential body of the profession, both in the metropolis and the country; and that they so endeavour to bring into one bond of union every respectable solicitor in the kingdom, and to concentrate and render available the power and influence which all persons admit solicitors as a body possess, as to support and maintain their just rights and privileges, and the high position which the profession are entitled to assert.

"Your committee feel high satisfaction in communicating the information they are thus enabled to give; and as the association thus formed is the result of efforts originating with this society, they look forward with much confidence to its extension, as well as to the formation of new provincial societies in distant parts of the kingdom, to aid in carrying to a successful termination objects of so much importance to the profession and the public. They have, in conclusion, to state, that cases submitted to them from certain of the societies in connection with this association, have received their best attention and consideration."

This very satisfactory report was adopted, and the accounts having been read and passed,

Mr. John Hope Shaw was elected president of the association for the ensuing year; Mr. H. H. Statham, of Liverpool, and Mr. George Thorley, of Manchester, vice-presidents; and Mr. R. M. Whitlow, and Mr. T. Taylor, both of Manchester, were re-elected treasurer and honorary secretary.

#### MANCHESTER LAW ASSOCIATION.

THIS society held its ninth annual meeting in its rooms, at three o'clock; Mr. John Barlow, of the firm of Messrs. Barlow and Astons, presided.

Mr. T. Taylor, the honorary secretary, read the following report:

"Your committee have great pleasure in presenting to the members, at their annual meeting, a short epitome of their duties during their period of office. The society still continues to increase in number; twelve new members have been elected during the year, and there are several candidates for admission now on the books. One member has withdrawn from the society, and the names of two others have been struck off for non-payment of their subscriptions.

"Few measures of any material importance to the profession were introduced into parliament during the last session. The bankruptcy bills brought into the House of Lords by the Lord Chancellor and Lord Brougham, are the only measures requiring any particular notice. These bills, after a careful consideration, your committee thought did not promise such a reform of the bankruptcy law as appeared likely to be acceptable or useful to the commercial community, and they were accordingly referred to a sub-committee, with a request that they would communicate with the Manchester Chamber of Commerce and Commercial Association on the subject. Your committee have great pleasure in stating that both those bodies, after having been waited upon by the sub-committee, at once agreed to co-operate with this society in endeavouring to place the law of bankruptcy and insolvency upon a satisfactory footing. The bills were withdrawn, and have not yet been introduced into the present parliament; but as the necessity for a material alteration in the law is too pressing to be long delayed, your committee beg to call the earnest attention of their successors in office to this subject, and to suggest the great importance of co-operations with the commercial community, through the medium of their societies.

"Several cases have been forwarded to your committee for their decision, not only from the members but from other societies. The most important of these will be added as an appendix to this report. Your committee beg to call particular attention to the opinion of Mr. Hedge on the stamping of affidavits, which is

given at length in the appendix. The amendment of the present law of mortmain has received the consideration of your committee. Your committee having ascertained that the Secretary of State for the Home Department was willing to receive suggestions from this association for an amendment of the law of mortmain, and having obtained an assurance from him that such suggestions should receive his best consideration, a sub-committee consisting of gentlemen who have paid especial attention to that law, applied themselves diligently to the object of devising a scheme for reforming the present law and practice of mortmain and charitable uses, which, whilst it should not do violence to the religious or political feelings of any persons or party, would effectually remove that inconvenience and iniquitude of title which are known to lawyers to spring from the present law, and have sent to Sir George Grey a statement of their views, which has been courteously acknowledged. By the course which your committee have taken on this subject, they have justified and borne out the credit which the association has always taken to itself, of being ready to procure or support such sound alterations of the law as will be practically beneficial to the public.

"Your committee, during the past year, have found it necessary to call the attention of the secretary of the Incorporated Law Society, and the Solicitor to the Stamps and Taxes, to several parties in this town and neighbourhood practising without certificate, considering it to be their duty not to allow any advantage to be taken on those members of the profession who obey the law, however unjust the law may be.

"Your committee have also felt called upon to oppose the renewal of a certificate in one instance. They furnished the Incorporated Society with affidavits, setting forth the grounds of opposition, and that society instructed counsel to oppose the application; the party alluded to declined going into the inquiry, and at once withdrew his name.

"Your committee cannot conclude their report without calling the attention of the members generally to the able and important addresses issued by the Metropolitan and Provincial Law Society. To that society, forming as it does a bond of union of attorneys and solicitors, both in town and country, the profession may confidently look for that protection of their legitimate rights and privileges which has been so long and anxiously required. To that society, if it meets with that cordial support which it so richly deserves, and which it has so far experienced, we may safely trust our honest claims, feeling assured that, both in parliament and in the press, those claims will receive a careful and impartial consideration; and to use the language of one of the addresses, "That the day is not far distant when the tone of public feeling towards the profession will be changed, and the character and station of the solicitor placed upon that honourable eminence to which not only is he justly entitled, but

which the public interests require that he should occupy."

This report was unanimously adopted—the accounts were read, and passed, as audited. Mr. Joseph Grave was elected president; Messrs. J. F. Beever, and C. Gibson, town-clerk of Salford, vice-presidents for the ensuing year; and Mr. R. M. Whitlow, and Mr. Thomas Taylor, were re-elected treasurer and honorary secretary.

#### ORDER OF THE MASTER OF THE ROLLS APPOINTING EXAMINERS.

January 11, 1848.

WHEREAS, by an order made by the Right Honourable the Master of the Rolls, on the 13th day of February, 1844, it was, amongst other things, ordered that every person who has not previously been admitted an attorney of the Court of Queen's Bench, Common Pleas, and Exchequer, or one of them, should, before he be admitted to take the oath required by the statute 6 & 7 Vict. c. 73, to be taken by persons applying to act as solicitors of the High Court of Chancery, undergo an examination touching his fitness and capacity to act as a solicitor of the said Court of Chancery: and that twelve solicitors of the same court, to be appointed by the said Master of the Rolls in each year, be examiners for the purpose of examining and inquiring, touching the fitness and capacity of every such applicant for admission as a solicitor: and that any five of the said examiners shall be competent to conduct the examination of such applicant.

Now, in furtherance of the said order, the Right Honourable the Master of the Rolls is hereby pleased to order and appoint that Keith Barnes, Robert Riddell Bayley, Thomas Clarke, George Herbert Kinderley, Edward Lawford, Thomas Metcalfe, Edward Leigh Pemberton, Edward Rowland Pickering, John Innes Pocock, John James Joseph Sudlow, Robert Whitmore, and Thomas Wing, solicitors, be examiners until the 31st December, 1848, to examine every person (not having been previously admitted an attorney of the Court of Queen's Bench, Common Pleas, and Exchequer, or one of them,) who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said court. And the Master of the Rolls doth direct that the said examiners shall conduct the examination of every such applicant, as aforesaid, in the manner and to the extent pointed out by the said order of the 13th day of January, 1844, and the regulations approved by his lordship in reference thereto, and in no other manner and to no further extent.

(Signed.) LANGDALE.

[In the Common Law Rule, besides the Masters, the following gentlemen are added to the above 12 Examiners:—John Coverdale, Germain Layie, Robert Wheatley Lumley, and

Charles Ranken. The examination usually takes place under a common law application, and 16 Examiners are appointed, being four for each Term.]

## NEW RULES IN THE COURT OF EXCHEQUER.

### REMANETS.

WHERE any case appointed for trial on a particular day shall be made a remanet without any previous application or intimation to the court, such case will take its place in the Cause List of the following sittings, after all the cases that may remain untried.

By the Court,

*Court of Exchequer,*  
Dec. 8, 1847.

R. N.

We received a copy of this rule only last week after the number was made up, and therefore placed it on the cover,—where it will be convenient to state such information as may arrive too late for insertion in its regular place in the work.

A Correspondent wishes the profession to know, that when they, in a laudable anxiety to save their clients' pockets, by avoiding the unnecessary attendance of witnesses, and their cause is not likely to come on, agree to make their case a remanet, the effect will be to tumble their cause headlong to the bottom of the list. Nothing saved a cause of his from such a fate, but a lucky discovery that he made in the evening before the date of the rule. So "after argument" the cause was re-inserted in the place from which it had been struck out.

*Gray's Inn.*

A. H. M.

## EXAMINATION AND ADMISSION OF SOLICITORS AND ATTORNEYS.

THERE are 114 Candidates to be examined on Monday, the 24th inst.

The Master of the Rolls has appointed Friday, January 28th, at the Rolls Court, Chancery Lane, at a quarter past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Thursday, the 27th.

THE first of the 10 days, during which the Examination usually takes place, would be Saturday, the 22nd instant. That day would be inconvenient to commence the examination, inasmuch as the candidates would be kept in suspense till Monday, and the larger part, who come from the country, would be detained in town in order to be sworn in before the Master of the Rolls—the day for which is usually towards the end of the term, in order to include those whose articles do not expire till that time.

The candidates have the first seven days of term to leave their papers, and consequently, allowing time to investigate the testimonials, the examination cannot take place till the latter part of the term.

In order to give as much time as possible for swearing-in the candidates in the common law courts before the day fixed at the Rolls, the examiners' certificates will be delivered to such candidates as may be entitled thereto, on *Tuesday afternoon*, the 25th. They may consequently be sworn at Westminster, in the common law courts, either on *Wednesday* or *Thursday*, and probably some may be taken on *Friday* morning, and be sworn at the Rolls at a quarter past three o'clock on the latter day, the 28th inst.

## ADDITIONAL APPLICATIONS FOR TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

*Before a Judge at Chambers, on the 1st day of February.*

[See former List, p. 258, *ante*.]

### Queen's Bench.

Atkinson, Edward Parke, Birkenhead; and Runcorn

Bardoulean, Stephen René, Yeovil, and Manchester

Jardine, John Henry, Stoke, near Halstead  
Wilkins, William Henry, 5, Caroline Street, Bedford Square; and Southampton Street.

\* \* We are requested to state that the Mr. John Jones of Liverpool, mentioned in the List of Applications to renew Certificates, (p. 258,) is not the Mr. John Jones late of Eldon Chambers, who has been in actual practice for many years, and who has duly and regularly taken out his annual certificate.

## NOTES OF THE WEEK.

### SOLICITOR'S LIEN ON ORDER OF COURT.

A CASE came before Vice-Chancellor Knight Bruce, on the 17th instant, in which the question was, "Whether an order of the court, which had been passed, could be intercepted in its entry by reason of any lien which a solicitor had." His Honour said that the solicitor undoubtedly had such lien, but he was clearly of opinion that the solicitor must produce the order in question to the proper officer of the court, for the purpose of the same being entered; and the order, when so entered, should be returned to him, and the new solicitor should pay him 20s. for his costs of attendance for that purpose.

His Honour intimated that a solicitor had a lien upon any fund paid, or to be paid, into court under any order which had been obtained wholly or partially by the skill and labour of the solicitor, and he was disposed to add to the order, that it should be without prejudice to his lien,—with a declaration that he was entitled to a lien on any cash, or funds

which were or should be paid into court in the cause, for his bill of costs in the cause. But ultimately it was understood that the present order was confined to the production of the former order for the purpose of being entered.

#### INCONVENIENCE OF EQUITY SITTINGS AT WESTMINSTER.

Great inconvenience and loss of time are occasioned to counsel and solicitors practising in the Court of Chancery, from its sittings being held during term time at a place distant from the offices and places of business. This grievance was fully stated in supporting the application for the removal of the courts. It is well known that the situation of the courts at Lincoln's Inn is more convenient, both to the public and the profession. We understand a memorial is about to be presented to the Lord Chancellor, from 200 of the Junior Bar, praying that his lordship will direct the sittings to be held at Lincoln's Inn during the terms in which parliament is not sitting. A similar memorial will be presented by the Incorporated Law Society on the part of the Solicitors, who are greatly inconvenienced by the courts sitting so far from Chancery Lane.

The following is a copy of the Memorial from the Bar:—

“To the Right Honourable the Lord High Chancellor of Great Britain.

“The humble Memorial of the undermentioned

Barristers, practising in the Court of Chancery.

“Sheweth,—That very great inconvenience and loss of time is occasioned to your memorialists by the sittings of the Court of Chancery being held during term at a place distant from the Registrars' and Masters' Offices, and the places of business of nearly all the solicitors practising in this court.

“That the courts at Lincoln's Inn are more commodious to the barristers, the solicitors, and the public, and since the opening of the New Hall at Lincoln's Inn, these courts remain entirely unoccupied during term.

“Your Memorialists therefore humbly pray, that your lordship will direct the necessary steps to be taken for causing the sittings of the court to be held at Lincoln's Inn during such time as parliament is not sitting.

“And your Memorialists will ever pray, &c.”

#### PUBLIC RECORD DEPOSITORY.

We understand that the bill authorizing a suitable building for the Public Records to be erected on the Rolls' estate will be proceeded with early in the Session. We hope next summer to see the actual commencement of this long-desired work. This and other coming events evidently favour the removal of the courts, for which the profession in general has long called.

### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Hurst v. Padwick.* Jan. 11 and 12, 1848.

SECURITY FOR COSTS WHEN PLAINTIFF TEMPORARILY ABANDONS HIS RESIDENCE.

*The description as of his usual and long-established place of residence by a plaintiff who conceals the place of his actual abode, whilst under apprehension of being served with processes at law in matters unconnected with the suit, is not such a fraudulent misdescription as will entitle the defendant to move for security for costs; especially if it appears on the pleadings that the defendant is an accounting party to the plaintiff.*

Mr. J. Parker, with whom was Mr. T. W. Greene, stated that the present appeal was from a decision of his honour the Vice-Chancellor of England, refusing a motion by the defendant to stay proceedings until security for costs should be given, under the following circumstances:—The plaintiff described himself in his bill, filed in September last, as being resident at Horsham, in Sussex, the borough of which he had then recently represented, and where his family and he had long resided. It appeared, from affidavits obtained by the defendant, that

the plaintiff's mother still resided near Horsham, that the plaintiff was there on a visit to his mother in the August previously—that he had not otherwise resided there during the past year—that he had not been heard of at his club in London since the dissolution of parliament in July last—that his present address could not be found, as his son refused to divulge it—that it was unknown to his solicitor—and that the latter refused to accept service for him in a suit which the defendant wished to commence against him. The learned counsel cited, *Sandys v. Long*, 2 Myl. & K. 487; *Bailey v. Gundry*, 1 Keen, 53; *Simpson v. Burton*, 1 Beav. 556; *Calvert v. Day*, 2 Yo. & Col. (Exch.) 217, upon the authority of which cases they contended, that the defendant's motion should have been allowed.

Mr. Terrell, who was followed by

Mr. Rolt, submitted that there was not such a misrepresentation of his place of residence on the part of the plaintiff as would entitle the defendant to the order which he now sought. The plaintiff, who had become embarrassed in his circumstances, was apprehensive of being served with numerous processes at law, and therefore deemed it expedient to conceal, except from his family, his present abode; but, although his son had declined to divulge it, he



had sworn in his affidavit that the plaintiff was not out of the jurisdiction of the court. The bill was filed against the defendant in respect of the plaintiff's property, which had been assigned by him to the defendant in trust for the plaintiff, and it appeared from the defendant's own statement, when he applied to the plaintiff's solicitor for his address, that he required it not merely for the purpose of serving him with process in the suit which he intended to commence in this court against him (the plaintiff), but *also for other purposes*. Under these circumstances, the Vice-Chancellor had required an affidavit of merits, and upon its appearing from such affidavit that the property of the plaintiff (the subject-matter of the suit) was vested in the defendant, and that the latter could reimburse himself thereout any costs to which he might become entitled, his Honour remarked that the defendant was battling with a shadow, and refused his motion.

The Lord Chancellor. The current of the cases cited and of the opinion of the court seems to have been directed to the matter of fraudulent concealment, but why I cannot see. The real object of requiring the plaintiff's address was that the defendant might know with whom he was contending. The plaintiff must, by the practice of the court, state in his bill some place of residence. This plaintiff probably has no permanent place of abode. How is he to describe himself? With all due deference to the Court of Exchequer, the case of *Calvert v. Day*, (supra,) which was a case of a travelling pedlar without any fixed residence, seems to go to a great length.

Mr. James Parker, in reply. Another principle is, that the defendant has a right to personal security against the plaintiff for the costs of interlocutory and other matters, and if, from ignorance of the plaintiff's place of abode, he cannot proceed against him personally, he may have security given for costs. *Calvert v. Day* has been followed by the Vice-Chancellor of England, in the case of *Player v. Anderson*, 10 Jur. 169.

Jan. 12. The Lord Chancellor, having stated the facts as they appeared from the affidavits, remarked that there did not seem to be any evidence of fraud in concealing the present residence of the plaintiff. The cases cited had been decided upon the grounds of fraudulent concealment for the purpose of evading service of process in the suit; but such was not the case in the present instance, which his lordship thought did not come within the principle of the case in *1 Keen*, decided by the Master of the Rolls, (*Bailey v. Gundry*, supra). In the other case cited, (*Simpson v. Burton*), also decided by the Master of the Rolls, his lordship, in remarking that it is the duty of a plaintiff to state his place of residence truly and accurately at the time he files his bill, and if for the purpose of avoiding all access to him he wilfully misrepresents his residence, he will be ordered to give security for costs, says, "I do not think the rule extends to a case where he has done so innocently and from mere error."

Nor could his lordship (the Lord Chancellor) divest his mind of the fact, which indeed appeared on the pleadings, that the present objection was taken by the accounting party, and that the result of the plaintiff's residence being discovered might possibly deprive him of all his property, and thus defeat the ostensible object of the defendant in asking for it. He therefore thought that the Vice-Chancellor had come to a right conclusion, and that the present application must be dismissed with costs.

### Rolls Court.

*Marks v. Marks.* Nov. 20, 1847.

EVIDENCE.—RETURNS OF EAST INDIA COMPANY.

*The returns made to the East India Company admitted as evidence of the death of one of their servants who died at Delhi.*

IN this case there was a question as to the mode of proving the death of one of the civil servants of the East India Company who had died at Delhi. As evidence certain quarterly returns made to the East India Company were adduced, in which this person was stated to have died at Delhi; and also an affidavit of identity and of the difficulty of procuring any certificate of the death in consequence of the distance of Delhi from any presidency.

Mr. F. Hall for the petitioner.

Lord Langdale said, that he thought, under the peculiar circumstances of the case, he might act upon the evidence, if any corroborative circumstance, such as private letters speaking of the death of the party in question, could be adduced.

### Vice-Chancellor of England.

*Gregory v. Wilson.* Dec. 23, 1847.

INFORMATION.—AFFIDAVIT.—3RD ORDER OF MAY, 1839.

*Where, on a motion, a common injunction is sought to be obtained for default of answer to an amended bill, an affidavit in support of the motion, containing a general statement of the truth of the amendments, is sufficient.*

IN this case the original bill was filed to restrain the defendants from proceeding in an action at law. They answered;—plaintiffs amended their bill, and an answer to the amended bill not having been put in within the time limited by the 3rd Order of May 9, 1839, plaintiffs moved for the injunction, and the affidavit in support of the motion was as follows:—"That to the best of their knowledge, remembrance, information, and belief, the facts stated and charged by way of amendment, were each and every of them respectively true." The 3rd Order of May 9, 1839, directs, that the plaintiff shall be entitled to move for the injunction upon affidavit of the truth of the amendments. The question was, therefore, whether looking at the



words of the order, this general affidavit was sufficient, or whether each of the facts stated and charged by way of amendment must be verified.

Mr. Murray appeared in support of the motion.

The Vice-Chancellor said, he considered the affidavit to be sufficient, and that it was not necessary to verify each of the facts specifically.

*Pollock v. Pollock*, Jan. 1848.

WILL.—CONSTRUCTION.—GIFT OF RESIDUE.

*Where a testator gave the residue of his property in trust to be divided into eight parts, one of such parts to be the property of and paid to his six sons, one other part to be paid to his daughter on her attaining 21, and in case of her death under that age, her share to be divided equally among his six sons, and the remaining eighth part for the benefit of his grandchildren: Held, that each of the six sons took an eighth part of the residue.*

SIR DAVID POLLOCK, by his will, after making various bequests, "gave and devised the rest and residue of his property to trustees, to be divided into eight parts, one of such parts to be the property of, and to be paid over to, his six sons, and one other such part to be paid to his daughter on her attaining the age of twenty-one years, and should she die before attaining that age, the share bequeathed to her to be equally divided among his six sons, and the remaining eighth part to be invested in government securities, and the dividends to be applied in the education of his grandchildren." The question raised was, how the residue was to be disposed of,—whether each of the six sons were entitled to an eighth part, or whether the testator intended eighth part only to be divided among them.

Mr. Bacon and Mr. Follett for the plaintiffs.

Mr. Bethell and Mr. E. R. Adams for the defendants.

The Vice-Chancellor, after reading the words of the bequest, said,—It was clear that one share was given to one party, and by the terms of the will, of the remaining eighth parts, one part only was given to the daughter, so as to denote that the testator conceived that he had somehow or other disposed of the six parts besides the part to the daughter. The question was, how should the undisposed-of shares be given? should they be allotted to the daughter before spoken of, or to the six sons and daughter? His opinion was, that the scheme of the testator, as far as it went, was to put each child on an equality. The daughter could not take more than one share, that being clear from the fact that in the event of her death before 21, her share was to go amongst the six sons. He should therefore declare that the daughter take one-eighth share, the six sons each one-eighth share, and the remaining eighth share should go to the grandchildren.

## Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Inhabitants of Mylor*. Michaelmas Term, 1847.

ORDER OF REMOVAL—COPIES OF ALL DOCUMENTS RECEIVED BY REMOVING JUSTICES TO BE SENT TO THE APPELLANTS.

*Copies of all the examinations taken, and of all documents received by the removing justices touching the settlement of a pauper must be sent with a copy of the order to the appellants.*

*Where an examination set up two grounds of removal, one by hiring and service, and the other by a previous order of removal unappealed against, but a copy of this previous order was not sent with the other examinations:*

*Held, that the respondents were precluded from going into proof of either ground of settlement.*

ON appeal against an order for the removal of a pauper from the borough of Penryn to the parish of Mylor, the sessions confirmed the order subject to a case. The examinations set out a complete settlement by hiring and service in the parish of Mylor, in the year 1806. The examinations then set out the removal of the pauper to the parish of Mylor under a former order. No copy of the above order was sent with the rest of the examinations. It was objected in one of the grounds of appeal, that no copy or extract of the alleged order, stated to have been produced before the removing justices, was sent with the examinations to the appellants. The sessions heard the appeal and confirmed the order, subject to the opinion of the Court of Queen's Bench, on the point whether the respondents had any right to enter into their case at all.

Mr. Pashley, in support of the order of the sessions, contended that the respondents were entitled to go into their case, inasmuch as the examinations set up two complete settlements, one by hiring and service, and the other by a former order of removal unappealed against, and the objection taken on the grounds of appeal applied only to the latter. In this respect the present case differed from *Regina v. Outwell*,<sup>a</sup> and *Regina v. East Rainton*,<sup>b</sup> where the court said that all the examinations taken before the removing justices must be sent to the appellant parish.

Mr. M. Smith contra.

The statute 4 & 5 W. 4, c. 76, s. 79, enacts, "that no poor person shall be removed or removeable until twenty-one days after a notice of chargeability, accompanied by a copy of the order of removal, and by a copy of the examinations upon which such order was made,

shall have been sent." In *Regina v. Ontwell*,<sup>c</sup> the court held that all the examinations must be sent; and Coleridge, J., there says, in giving judgment, that the word 'examinations' means the entire body of evidence taken on the occasion of making the order. That case has been followed by *Regina v. East Rainton*,<sup>d</sup> and *Regina v. Wellington*.<sup>e</sup>

Lord Denman, C. J. The objection is, that a copy of the order of removal has not been sent with the other examinations, and I am sorry to be compelled to come to the conclusion that it must prevail, as there was a good settlement by hiring and service set out in the examinations, and it was well proved. The words of the act construed in one way are conclusive to show that the respondents could not go into their case, and that construction has been universally acquiesced in by all parties concerned in the administration of the Poor Laws. The statute has been construed according to its certain and undoubted meaning, that whether the appeal is against the actual removal of the pauper or upon the service of the order of removal, the examinations must be sent, and the appellants have twenty-one days for the purpose of deciding whether they will appeal or not. The whole of the examinations must be sent; and if overseers were to be allowed to exercise a discretion as to the documents to be sent, we should let in a current of doubt and uncertainty, and should create confusion and litigation. We are, therefore, compelled to say, that in this case the objection must prevail.

Mr. Justice Coleridge. I am of the same opinion, and I lay out of my consideration any consequences that may be produced by a right construction of the act. The objection was, that no copy of a document which formed part of the examination had been sent. The respondents intended to rely upon two grounds. This document was produced and given in evidence, and was material to prove one ground of settlement. Mr. Pashley has argued that the respondents were not precluded from going into the other head, but I think that the statute does not contemplate this distinction, and it would leave it in the power of respondents to keep back part of the evidence taken before removing justices, and only to send the documents necessary to prove the case relied on, and we should then be called upon to decide whether the evidence so kept back was material to support that case. The words of the act are, that a copy of the order of removal is to be sent, "accompanied by a copy of the examinations on which the order was made." Then it is argued that this is no ground of appeal until the removal has actually taken place; but the Lord Chief Justice says, that if we listen to that we should construe the act contrary to decisions and practice. When an order is sent you must send copies of the examinations; they must go together, as the object is to give the appellants an opportunity of deciding whether

they will appeal or not. And in the same section a provision is made for cases where the overseers agree to submit to such order, but that must mean to an order accompanied by a copy of the examinations on which the order is founded. The act says that the pauper shall not be removed or removable until twenty-one days after copies of the examinations have been sent. Here the appellants say that he is not removable, and that is the plain construction of the act.

*Wightman and Erle, Js., concurred.*

Order of sessions quashed.

*Padwick v. Baldwin.* Hilary Term, 1848.

#### BILL OF EXCHANGE.—PLEADING.

*Where the words "payable at" a certain place are added to the acceptance of a bill of exchange, they need not be introduced in the declaration.*

This was an action on a bill of exchange for the sum of 500*l.*, payable six months after date, with an acceptance in this form: "Accepted — Baldwin, Payable at 13, Stratford Place, London." The declaration contained two counts, one on the bill, alleging in the general form that the defendant "accepted the same;" the other count was on an account stated. The cause was tried before Mr. Justice Erle, when it was objected that the count on the bill was bad for omitting from the description of the acceptance the statement of the place where the bill was made payable, and as there was no distinct proof applicable to the count on the account stated, it was contended that the plaintiffs must be nonsuited. It was answered that the count on the bill was good without the introduction of the statement respecting the place of payment, and that the bill itself being an acknowledgment of the debt, was evidence under the account stated. As the learned judge doubted whether the introduction of the words relating to the place of payment did not prevent the instrument from being a mere acknowledgment of a debt, so as to support the account stated, his lordship required the counsel for the plaintiff to elect on which of the two counts he would take the verdict. The plaintiff's counsel elected to take it on the count on the bill, and a verdict was accordingly entered for him on that count, and a verdict for the defendant on the account stated.

Mr. Bramwell now applied for a rule for a new trial, on the ground that the omission of the words relating to the plea of payment was a fatal objection. These words form an important part of the undertaking of the defendant. It is said that the contract was complete before these words were added. That is not so, because the party's signing his name is not sufficient. He must deliver the instrument, and till he does so he cannot be said to have made the contract. That is shewn in the ordinary form of a declaration on a bill which alleges that he then made his bill of exchange

<sup>a</sup> 9 Ad. and El. 836.

New Sess. Cas. 23.

<sup>c</sup> Ibid. 176.

and delivered the same to the plaintiff, or to the drawer, as the case may be. In the case of *Trecothick v. Edwin*,<sup>a</sup> where the note contained words of a similar kind printed as part of the form of the note, it was held that a special presentment was necessary. [Mr. Justice Erle. But there they formed part of the note before its acceptance.] In *Exon v. Russell*,<sup>b</sup> where a contrary holding took place, the words were added after the signature in such a manner as to be wholly disconnected from the signature. That is not the case here, where the name of the acceptor and that of the place form two connected parts of the same sentence. That case therefore does not affect the former, which must govern the present.

*Cur. ad. vult.*

Lord Denman, C. J. We have considered this application, and think that the bill was complete before the place of intended payment was inserted. The statement of that place was a mere memorandum added to a complete instrument, and did not, therefore, require to be set forth in the count upon that instrument.

Rule refused.

*Tolson v. Notley.* Hilary Term, 1848.

PLEADING.—FRAUD.—DE INJURIA.

*To a declaration by the indorsee against the drawer of a promissory note, the defendant pleaded that the payee was indebted to him, and that after the note became due it was agreed between the payee and the plaintiff, for the purpose of defeating the defendant's right to set-off as against the payee, that the payee should indorse the note to the plaintiff, and that the note was so indorsed, and that the plaintiff was suing for the use and benefit of the payee and for him alone. Replication de injuriâ. Special demurrer. A judge at chambers set aside this demurrer as frivolous. Held, that the demurrer was frivolous, for that where a plea of set-off sets up fraud as an answer to the action, de injuriâ is a proper replication.*

THIS was an action on a promissory note brought by the indorsee against the maker. The payee of the note was a person of the name of Webb. The defendant pleaded, that before the indorsement of this note, Webb was indebted to the defendant in a certain sum, which the defendant was willing to set-off, (and then there followed the ordinary form of set-off,) and that after the note became due, it was agreed between the plaintiff and Webb, for the purpose of defeating the defendant's right to set-off against Webb, that Webb should indorse the note to the plaintiff, and it was so indorsed by Webb without consideration, and that the plaintiff in this action was suing for Webb, and for Webb alone, and for his use and benefit. The plaintiff replied *de injuriâ*. The defendant demurred to this replication specially. An order had been made by Mr.

Justice Erle to strike out this demurrer as frivolous.

Mr. Barstow now moved to rescind this order. This is the case of a set-off against the principal, where the action, though brought in the name of the agent, is brought for the benefit of the principal. Now a set-off admits the plaintiff's right of action, and even his right to commence the action, but sets up a right to a counter action on the part of the defendant. In such a case, the replication of *de injuriâ* is not allowable. The rule is laid down in the judgment of Lord Chief Justice Tindal, in *Salter v. Purchell*,<sup>c</sup> in error, as when it is said, "A plea of set-off operates as a bar to the plaintiff's right of action, not by excusing or justifying the breach of promise complained of in the declaration, but, whilst it admits such breach to have been committed, by setting up, as a matter of compensation, the cross demand of the defendant, by force of the statute of Geo. 2. An ordinary plea of set-off cannot be met by the general traverse." That is, in substance, the same case as the present. [Mr. Justice Erle. When the case was before me, I put it upon this ground. The plea stated that Webb indorsed to the plaintiff with intent fraudulently to defeat the plea of set-off, and that the plaintiff took it for that purpose. I treated that as a plea alleging that the plaintiff's title to the note was tainted with fraud, and there was a case in the last number but one of the "Jurist," in the Court of Exchequer, where that Court said, that when the plea alleged that the plaintiff's title was tainted with fraud, the replication of *de injuriâ*, was an admissible replication. I thought it was so tainted in this case, and if I was right in that, then the case in the Exchequer is in point in favour of this replication]. But that interpretation of the plea is hardly warranted by the terms of it. There is a good deal in the plea which need not perhaps be there, but this mere surplusage cannot affect its substantial character. The substance of the plea is set-off alone. The allegation of fraud and collusion are not of the substance of the plea, which only amounts to this: "You are suing as agent for Webb, and for his use and benefit. I have a set-off against any claim of his, and you are taking up this claim of his merely to defeat my set-off." If that plea was to be tried upon an issue raised upon it, the judge who tried the cause would have to ask the jury whether in fact such a set-off did exist, and not whether the plaintiff had taken the note fraudulently to defeat it. The question that on such an issue must be put to the jury is a fair test of what is the real question raised by the plea.

Lord Denman C. J. The defendant is able under this replication to prove the truth of his plea. The rule in such cases is, that when fraud is the essence of the plea, *de injuriâ* is a proper replication. If fraud is not the essence of this plea, the plea has been wrongly drawn. If this defendant might substantiate his de-

<sup>a</sup> 1 Stark, 468. <sup>b</sup> 4 Maule and Selw. 505.

<sup>c</sup> See *Hardy v. Woodroffe*, 2 Stark, 319, and *Sproute v. Legge*, 3 id. 156; 1 B. & C. 16, 5 Man. & E. 9.

<sup>e</sup> 1 Queen's B. Rep. 197, 209, 219.

fence without proving fraud, he has induced the plaintiff to believe otherwise by the form in which he has pleaded. I see no ground for setting aside the order.

Mr. Justice *Patteson*. The defendant has made it part of his plea that what was done was fraudulently done. Whether that is properly pleaded or not I will not say. But he has put forward fraud on the face of his plea. To a plea so raising the question of fraud, the replication of *de injuriâ* is proper.

Mr. Justice *Erle*. The replication of *de injuriâ* always enables a defendant, if he has a real defence, to establish it before a jury. It seems to me that this is an attempt to take a technical

be set aside as to the excess above 1,407l., which was the sum due at the time of the execution, whereas judgment had been signed and execution issued for 1,800l.

The ground on which it was now sought to set aside the judgment signed on the warrant of attorney was that the attestation of the attorney attending on the behalf of the defendant to witness his execution thereof, was not in pursuance of the words of the Act of Parliament 1 & 2 Vict. c. 110, s. 9. The attestation was in these words: "Signed, sealed, and delivered (being first duly stamped) by the said James Kershaw, in the presence of William Keating Taylor, one of the attorneys of her Majesty's Court of Queen's Bench at Westmin-

in a case, where that replication allows the fair trial of a plea substantively alleging fraud, may be set aside as frivolous. The plea here does come within that description. It alleges a fraudulent transfer of the bill by Webb to defeat a set-off to which his claim was liable. I therefore thought myself at liberty, under the authority of that case in the Exchequer, to set aside this demurrer, and thus to allow these parties, if there were merits in the defence to try that question. When a plea states fraud, and sets that up as the essence of the answer to the action, the plaintiff may reply *de injuriâ*.

Rule refused.

### Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

*Pope v. Kershaw*. Hilary Term, Jan. 13, 1848.

*A warrant of attorney to confess judgment was attested by an attorney as follows:—*  
*"Signed, sealed, and delivered, (being first duly stamped,) by the said James Kershaw, in the presence of William Keating Taylor one of the attorneys of Her Majesty's Court of Queen's Bench, at Westminster, and attorney on behalf of the said James Kershaw, expressly named by him, and attending at his request to inform him, and I did inform him, of the nature and effect of the above written warrant of attorney before the same was executed by him, and I declare myself to be the attorney of the said James Kershaw. William Keating Taylor."*

*Held, on motion to set aside the warrant of attorney, that the attestation was a sufficient compliance with the 1 & 2 Vict. c. 110, s. 9, which requires that the attorney shall "state that he subscribes as such attorney."*

*Hugh Hill* moved, on behalf of the assignees of the defendant, who is a bankrupt, for a rule calling on the plaintiff to show cause why the judgment signed on the warrant of attorney given by the defendant herein, and all subsequent proceedings, should not be set aside, or why the execution issued thereon, should not

ing at his request to inform him, and I did inform him, of the nature and effect of the above written warrant of attorney before the same was executed by him, and I declare myself to be the attorney for the said James Kershaw. William Keating Taylor; also witness, Thomas Chapman."

The objection to this attestation was, that it did not state that the attorney subscribed his name "as attorney" to the defendant, which it was submitted is necessary under 1 & 2 Vict. c. 110. By the 9th section of that act, no warrant of attorney to confess judgment is to be of any force "unless there shall be present some attorney of the superior courts on behalf of such person (the defendant) expressly named by him, to inform him of the nature and effect of such warrant or cognovit before the same is executed, which attorney shall subscribe his name as witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney."

*Erle, J.* Here the attorney attesting declares himself to be attorney for the defendant *eo instante* that he subscribes the document.

*Hill*. Yes, but he does not state that he subscribes as such attorney, as required by the act, and equivalents ought not to be allowed, for if you once let them in, the greatest inconvenience must ensue. *Everard v. Poppleton*, 5 Q. B. 181, is an authority for the assignees as to the present application, and in that case Lord *Dennaman*, C. J., in giving judgment says, "I think the reasons which led to demanding an exact compliance with the statute, (1 & 2 Vict. c. 110,) are both cogent and forcible; this case, however, does not raise the point, for 'acting' is really the same thing as 'attending.' The attorney attending may stop short in his agency before the attestation, so may the attorney who is acting. I should like to see the words of the statute always literally followed; nothing is more unfortunate than a disturbance of the plain language of the legislature by the attempt to use equivalent terms."

*Erle, J.* There are two requisites in an attestation by an attorney; it must appear that he is an attorney attending at the defendant's request, and that he subscribes

as such attorney; no particular form is given by the statute, and so you must express these two ideas plainly. In this case the attorney says, I am the attorney of the defendant, and attend at his request, and have done all that is necessary in reading over and explaining the documents, and *eo instante* he signs. Every one who reads this attestation will see that the person attesting has read and considered the act of parliament, and has described the two ideas which are to be expressed in the clearest terms. At the moment he subscribes he declares himself the attorney of the defendant. In the case cited of *Everard v. Poppleton*, 5 Q. B. 181, one only of the two ideas is expressed, which distinguishes that case from the present.

*Lowndes, amicus curiæ*, mentioned the case of *Lewis v. Lord Kensington*, 2 C. B. 461, which decides, that in the attestation of a warrant of attorney, or *cognovit* order, 1 & 2 Vict. c. 110,

9, it is not necessary that the precise words of the statute should be followed, and that it is enough that it appears by necessary inference that the witness attended as the attorney for the party at his request, and that he subscribed his name as such attorney.

*Erle, J.* I remember that case well, as it was decided after mature consideration, whilst I was a member of the Court of Common Pleas; it is quite in point in the present case. I think, therefore, that the attestation in the present case is quite sufficient.

*H. Hill* then stated the facts of the case, with reference to the other branch of his rule, on which the court granted a rule *nisi*.

Rule refused, as to first point on the attestation granted on the second as to the excess.

### Common Pleas.

*Miles v. Pope.* Sittings after Michaelmas Term, Dec. 9th, 1847.

**ACTION AGAINST BANKRUPT.—PLEA IN BAR.—ORDER FOR PROTECTION FROM PROCESS UNDER 7 & 8 VICT. C. 96, s. 28.**

*Where a bankrupt defendant pleaded the granting of a final order by a commissioner in bankruptcy for protection and distribution, in bar of an action for a debt contracted before the date of filing his petition for protection, and at the trial of the cause produced in evidence an order for protection only, made under the 28th section of the 7 & 8 Vict. c. 96: Held, that such order was no bar to the action, as it did not fall within the provisions of the 5 & 6 Vict. c. 116, s. 10, and did not therefore support the defendant's plea.*

THIS was an action against the defendant as the acceptor of a bill of exchange of which the plaintiff was indorsee. The defendant pleaded, that after the acceptance of the bill, and after the same had become due and payable, and before the commencement of the suit, a petition for the protection of the defendant (he being a trader within the meaning of the statutes now

in force with respect to bankrupts, but then owing debts amounting in the whole to less than 300*l.*.) from process was duly and according to the form and effect of the said statutes in such case made and provided, presented by the defendant to her Majesty's Court of Bankruptcy, and thereupon afterwards and before the commencement of this suit, to wit, &c., a final order for protection and distribution was made in the matter of the said petition by, &c., then being one of the commissioners, &c. And the defendant further said that the debt and cause of action in the second declaration mentioned was contracted before the date of filing the said petition in the said Court of Bankruptcy, and that the defendant was ready to verify, &c. Replication traversing the granting of the final order for protection and distribution *modo et formâ*. At the trial, in order to support the plea, the defendant proved an order in bankruptcy, which after the usual recitals stated, that it was for "protection from process of the person of the defendant, in respect of the several debts and sums of money due or claimed to be due at the time of filing his said petition, to the several persons named in his schedule as creditors or claiming to be creditors for the same respectively, or for which such persons shall have given credit to the said petitioner before the filing of his petition, and which were not then payable, and as to the claims of all other persons not known to the said petitioner at the time of making this order, who may be indorsees or holders of any negotiable security set forth in the said schedule." This order, it was objected, did not make out the plea, being only an order for the protection from process of the defendant, made under the 28th sec. of the 7 & 8 Vict. c. 96, and not one for protection and distribution, which was the only order declared to be a bar to an action, and that by the 10th sec. of the 5 & 6 Vict. c. 116: And subject to this objection, a verdict passed at the trial for the defendant, leave being reserved to move to set that verdict aside and enter a verdict for the plaintiff. A rule *nisi* having been accordingly obtained for that purpose,

*Hance* now showed cause. The order for protection, when once granted, ought, it is submitted, looking at the provisions of the 7 & 8 Vict. c. 96, ss. 22, 24, and 28, to have the same effect as an order granted under the former act. He referred to the cases of *Gillon v. Deare*, 2 Com. B. Rep. 309; and *Toomer v. Gingell*, 3 Com. B. 322.

*Prentice*, in support of the rule, was stopped by the court.

*Coltman, J.* If the final order proved at the trial were within the provisions of the 10th sec. of the 5 & 6 Vict. c. 116, that would have done; but instead of that a different order was proved, which could not be understood to be that upon which the parties went down to trial, the verdict, therefore, I think, ought to be entered for the plaintiff.

*Maule, J.* I am of the same opinion. The plea may and ought to be so understood as to amount to a plea of a final order, under which

the party would be finally protected and his property distributed. The order too must be one for distribution and protection, in order, under the 10th sec. of the former act, which was enlarged by the latter, to amount to a good bar to an action like the present, and the defendant was bound to prove it in that sense at the trial. Now, the order produced is only an order under the 28th sec. of the 7 & 8 Vict. c. 96, which says nothing about its being a bar to an action. As therefore this order is not such as either the 10th sec. of the 5 & 6 Vict. c. 116, or the present plea apply to, there has been a failure of proof at the trial, and the rule must be made absolute.

Cresswell and Williams, J. J., concurred.

Rule absolute.\*

### Court of Exchequer.

Harrison v. Thompson and Bryant. Jan. 12, 1848.

#### AFFIDAVIT.—JURAT.

*When an affidavit is sworn by more than one deponent, the name of each deponent must be inserted in the jurat.*

Atherton, in showing cause against a rule obtained by Lush, took a preliminary objection, that the affidavit upon which the rule had been obtained was not in conformity with the rule of court of Trinity Term, 1 G. 4, 8 Price, 501, which requires that when an affidavit is made by more than one deponent the name of each of the deponents must be stated in the jurat; whereas in the present case the jurat did not contain the names, but was merely in this form:—"Sworn by both deponents at my chambers, Rolls' Gardens," &c. In support of the application for costs he cited *Cobbett v. Oldfield and others*, 16 Law Jour. N. S. Exch. 150; *Blackwell v. Allen*, 7 M. & W. 146.

Lush, contra, wished to cite some analogous cases, but

*Per Curiam*. The rule of court is plain, distinct, and absolute. This rule must be discharged with costs of appearance.

Montague v. Payne. Jan. 11, 1848.

#### PARTICULARS OF DEMAND.

*The words "dates and items," which are not in the printed form of an order for particulars, ought not to be inserted; if they are, the judge to whom the application is made will strike them out.*

A RULE had been obtained, calling on the defendant to show cause why an order of Mr. Baron Platt's "for further and better particulars, with names, dates and items," &c. should not be set aside.

This was the fourth order which had been

obtained. All the particulars furnished had been for money paid, (varying the sums and credits,) without stating to whom paid or otherwise particularizing any of the payments. This last order only had the words "*dates and items*" inserted. From the plaintiff's affidavit it appeared that he was not capable of giving the names, &c., the books, papers, and vouchers containing the same being in the custody of the defendant. There was also an affidavit by the defendant that the plaintiff had a copy of all such documents as were necessary to furnish the required information.

Alderson, B. The plaintiff does not state in his particulars that the books, papers, and vouchers contain the names. The defendant ought to have better particulars, by the plaintiff's stating the names, or in some manner referring to them.

Platt, B. The words "*dates and items*" are not in the printed forms, but are frequently improperly introduced by the attorneys, and the judge if he sees them will always strike them out.

*Per Curiam*. The words "*dates and items*" must be struck out.

Belfast and County Down Railway Company v. Strange. Jan. 11, 1848.

#### PLEADING.

*The words "is a holder" in the 26th section of 8 Vict. c. 16, mean was a holder at the time of the calls made.*

THE declaration being for the amount of calls in the above company, stated that "the defendant before and at the time of the commencement of this suit, was and still is the holder of certain shares in the said company, and was and is still liable," &c.

To this the defendant pleaded, besides never indebted, 2ndly, "That at the time of the commencement of this suit he was not the holder of shares in the said company," &c.; 3rdly, "That he was not at the time of the calls made the holder," &c.

A RULE having been obtained to show cause why either of the latter pleas should not be struck out,

Atkinson contended that under the particular form of the declaration both were requisite to meet the facts.

Ogle, contra. "Never indebted" would cover the whole of the pleas. The declaration was according to the form given by the statute 8 Vict. c. 16, s. 26.

Parke, B. The form of declaration has not been framed by a very careful pleader. "Is a holder" means was a holder at the time the calls were made. The only person liable to the amount of calls is the person who held them at the time of making the calls, and no other.

*Per Curiam*. The second plea must be amended by striking out the words "at the time of the commencement of this suit," and the third plea be struck out altogether.

\* The decision in this case would appear to have an important bearing on the apparently conflicting County Court judgments referred to. *Ante*, page 237.—Reporter.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## Courts of Equity.

## EVIDENCE.

## ADMISSION.

*Answer.—Trustee and cestui que trust.*—*A.* transferred a sum of stock into the joint names of herself and *B.*, and then informed *B.* of the transfer, expressing her confidence that *B.* would fulfil the wishes, which *A.* might express to her, respecting the same. After the death of *A.* her administratrix filed the bill against *B.* for the transfer of the stock as part of the personal estate of *A.* *B.*, by her answer, admitted the transfer of the stock into the joint names of *A.* and *B.*, and stated that *A.* afterwards from time to time told her (*B.*) what part of the stock and dividends should be transferred and paid to different persons, and, subject to such dispositions, desired her to hold the remainder for her own use; and *B.* also, by her answer, stated that she had, in pursuance of such directions, paid the several sums to the persons mentioned: *Held*, that the plaintiff having read from the answer the admission of the transfer upon trust, was bound also to read from the answer the directions or declarations of *A.* as to the trusts upon which the fund was to be held and disposed of.

That the plaintiff ought not, in the circumstances of the case, to be allowed to withdraw that part of the answer which had been read.

That as to *B.*'s statement of the declaration of *A.*, that the residue should belong to *B.* herself, the court would direct an issue, giving the plaintiff an opportunity of examining *B.* thereon as to the directions given to her by *A.*

That the plaintiff was not bound to read the statement in the answer as to the fact of the payments to the other persons having been made; and that *B.* was bound to prove by other evidence the payments which she had made in pursuance of the trusts. *Freeman v. Tatham*, 5 Hare, 329.

Case cited in the judgment: *Rider v. Kidder*, 10 Ves. 360.

## ANSWER, READING.

See *Admission; Executor; Married Woman.*

## BANKRUPT.

*Vendor and Purchaser.*—A bankrupt from whom a purchase had been made was examined as a witness for the plaintiff in a suit instituted by the purchaser. Upon an objection being taken to his evidence, on the ground of his interest in the surplus of his estate, the cause was ordered to stand over. A release was then executed, and liberty was given to the plaintiff to prove the execution, and to examine the bankrupt upon the old interrogatories, or upon the new, the plaintiff paying the costs as between solicitor and client. *Bousfield v. Mould*, 34 L. O. 597.

## COMPETENCY OF WITNESS.

Where a person during the time he held the

office of guardian of a parish, had joined in prosecuting a suit against another guardian, and in appropriating the parish money towards the expenses of the suit, and had afterwards ceased to be a guardian: *Held*, that under the circumstances he had not such an interest in the suit as to prevent him from being examined as a witness before the Master, on behalf of the plaintiffs. *Puscall v. Scott*, 34 L. O. 153.

## CREDITOR'S SUIT.

*Decree.*—In a creditor's suit, where no evidence was given in the cause of the plaintiff's debt, the usual decree was made on an affidavit of the testator's signature to the promissory note on which the debt was founded. *Gascoyne v. Lamb*, 34 L. O. 525.

## DEATH.

A certified copy of the register of a death under the seal of the General Registry Office, accompanied by an affidavit of identity, is sufficient evidence of the death. *Purkinson v. Francis*, 15 Sim. 160.

## DEFENDANT.

*Witness.*—Although relief is prayed against a defendant, he may be examined as a witness by a co-defendant, against whom, independently, relief is prayed. *Ashton v. Parker*, 14 Sim. 632.

And see *Examination.*

## EXAMINATION OF DEFENDANT.

1. *Witness.*—*A.* filed a bill against *B.* and *C.* *B.* was the principal defendant, and the only question in the cause was between *A.* and him, but the court could not make a complete decree without an account being taken as between *A.* and *C.*, and as *A.* had examined *C.* as a witness in the cause, the court held that no decree could be made in the suit, and dismissed the bill, but without prejudice to the filing of a new one. *Champion v. Champion*, 15 Sim. 101.

Case cited in the judgment: *Bernal v. Marquis of Donegal*, 3 Dow. 133.

2. Notwithstanding the 6 & 7 Vict. c. 85, the evidence of a co-defendant cannot be read where both defendants have exactly the same cases. *Munday v. Guyer*, 34 L. O. 463.

## EXAMINATION OF WITNESSES.

*Admission of Defendant's state of facts after publication of depositions on the plaintiff's.*—A defendant who, under special circumstances, has not been required by the Master to put in a counter-statement to the plaintiff's state of facts, may be allowed after publication of the depositions on the latter, to bring in such counter-statement and examine witnesses for the purpose of supporting it, but not for the purpose of disproving or contradicting the facts in the plaintiff's statement. *Parker v. Peel*, 34 L. O. 152.



## EXECUTOR.

*Answer and examination. — Discharge. — Breach of Trust. — Acquiescence.*—On an inquiry before the Master, the plaintiff read from the answer and examination of the defendant, the executor, an admission that a promissory note for 400*l.* belonging to the testator, had come to the hands of the executor shortly after the testator's death, and the executor was then allowed to read the further statement, that some years afterwards, when the plaintiff, (the sole residuary legatee,) came of age, he had delivered the note to the plaintiff, who thanked him for taking care of it. *East v. East*, 5 Hare, 343.

## FOREIGN COURT.

See *Perpetuation of Testimony*.

## INSOLVENT PLAINTIFF.

1. The court refused to make an order for examining an insolvent who had been plaintiff in the original suit, although his assignees had, in consequence of the defect, filed a supplemental bill for the same objects, and asked leave to examine him. *Fisher v. Fisher*, 34 L. O. 597.

2. A plaintiff who has become insolvent during the suit cannot be examined by his assignees as a witness in their bill of revivor and supplemental in the cause. On appeal. *Fisher v. Fisher*, 35 L. O. 8.

3. The rule that a plaintiff cannot be examined as a witness in the cause is an absolute rule of practice, not depending on the question whether in the particular case he may or may not be liable for costs. *Fisher v. Fisher*, 2 Phill. 236.

Cases cited in the judgment: *Hewatson v. Tooke*, 2 Dick. 799; *Ewer v. Atkinson*, 2 Cox, 393.

## ISSUES.

*Different modes of ascertaining legal right.*—A bill by a vicar claiming as such a customary payment of 6*d.* in the pound on all claims and houses within the parish was, on a rehearing, retained, with liberty to the plaintiff to bring an action, the Lord Chancellor considering this a more proper course than the one proposed to be taken by the court below of directing first an issue to try the immemoriality of the custom, and then taking the opinion of the court of law upon the validity of such a custom, the case being open in which the jurisdiction of this court was resorted to merely as ancillary to a legal right.

Suggestion as to the propriety of going to law first to ascertain the right before filing the bill in this court.

Neither party to try an issue directed by the court is precluded by going to trial from afterwards appealing against the order by which it was directed. *Butlin v. Masters*, 2 Phill. 289.

## MARRIED WOMAN.

Where a married woman answered jointly with her husband, in a suit relating to the wife's separate estate, the court, in the absence of any authority to the contrary, allowed such answer to be read against herself. *Callow v. Howle*, 35 L. O. 65.

## NEXT FRIEND.

An order for the examination of a next friend as a witness, if obtained *ex parte*, is irregular, and especially if it be made pending a reference to the Master as to the propriety of the suit. *Palmer v. Horton*, 14 Sim. 633.

Cases cited in the judgment: *Walker v. Wingfield*, 15 Ves. 178; *Head v. Head*, 3 Atk. 547; *Armiter v. Swanton*, Amb. 393.

## OBJECTIONS.

The Master in his report stated, that he had admitted certain evidence, and that thereupon he found certain facts. A party objecting to the admission of the evidence, and to the conclusion thereupon, cannot open that objection as appearing on the face of the report, without having taken exceptions. *East v. East*, 5 Hare, 347.

## PARTNERS.

A bill having been filed by the plaintiff for contribution from his co-partners in an unsuccessful adventure, *Held*, that the evidence of those defendants who had disclaimed all profits and had been released by the plaintiff from all demands by him, was admissible for the purpose of establishing the fact of the co-partnership. *Hills v. Nash*, 34 L. O. 596.

## PERPETUATION OF TESTIMONY.

*Foreign Courts. — Jurisdiction.*—It is no objection to the publication of depositions which have been taken in a suit to perpetuate testimony, that the proceedings for which they are required are in the court of a foreign country, or that other depositions taken in a similar suit in that country have already been published.

*Semble.* This court has jurisdiction to perpetuate testimony with a view to proceedings in foreign courts. *Morris v. Morris*, 2 Phill. 205.

## REJECTION OF EVIDENCE.

A tenant for life in remainder filed a bill against a tenant for life in possession, and a tenant in tail in remainder also filed a bill against the same party, and evidence was taken in each suit, the defendant not consenting that the evidence in one cause should be read in the other. The court refused to allow that course to be taken, there being no proof that the witnesses were dead or incapable of being examined. *Blagrove v. Blagrove*, 34 L. O. 180.

## TRUST.

The answer of a trustee, who had handed over a trust fund to a co-defendant in the suit, by whom it had been applied to discharge liabilities of the trustee to himself, is not admissible for the purpose of raising a case for inquiry as to whether the co-defendant had not notice of the trust. *Hawks v. Howard*, 34 L. O. 613.

See *Admission; Executor*.

## VENDOR AND PURCHASER.

See *Bankrupt*.

## VICAR.

See *Issues*.

## WITNESS.

See *Competency; Defendant; Examination*.



**BUSINESS OF THE COURTS:****SITTINGS IN ERROR.**

THE Judges assembled in the Exchequer Chamber, on the 19th inst., to arrange the days on which the court would sit in error after the present Term. The judges present were,—Lord Denman, the Lord Chief Justice of the Common Pleas, Mr. Baron Parke, Mr. Baron Alderson, Mr. Justice Patteson, Mr. Justice

Erle, and Mr. Justice V. Williams; and the following sittings were appointed:—

The 1st, 2nd, 3rd, and 4th of February, and as many other days as shall be necessary, for cases in error from the *Queen's Bench*.

The 5th and 7th February for cases from the Exchequer.

[There appear to be none at present from the Common Pleas.]

**NISI PRIUS CAUSE LISTS.****Queen's Bench.****London.****REMANETS FROM LAST TERM.**

|   |   |   |  |
|---|---|---|--|
| D. Richardson<br>Capes and S.   | Mackay (Inj.)<br>Blackmore (Inj.)   | Brooke<br>Burton and others, execu-<br>tors, &c.  | Tres. Baxendale and Co.<br>Dt. Alban and B.<br>Dt. Smith   |
| Keene<br>Vincent and S.   | Dean (stayed)<br>Franklin & another (stay-<br>ed)   | S. J. Grace<br>S. J. Davis and others   | Covt. Wm. Bevan<br>Dt. Wilde and Co.<br>Prom. Few and Co.  |
| Lewis and S.<br>W. H. Green<br>Phillips<br>Pearce and Co.<br>C. B. Wilson<br>Jordeson<br>Hughes, K. and M.<br>Hook  | Brand (stayed)<br>Bond (Inj.)<br>Hartley & another (stayed)<br>Robertson (stayed)<br>Gibbs (stayed)<br>Cundell (stayed)<br>Berkley<br>Conyngham, Esq., and<br>others (Inj.)   | Harper<br>S. J. Stanley<br>Manton<br>S. J. Dargan<br>Aberdeen<br>Harrison and others<br>De Veau, sued, &c.<br>S. J. Macgregor   | Van Sandau & Co.<br>Covt. Norris and Son<br>Covt. Gilbert, Hook, & Co.<br>Pro. Chester and Co.<br>Pro. Condell<br>Prom. Fearon and C.<br>Proms. Milne and Co.<br>Trov. Wright and K.<br>Proms. Tatham and Co.<br>Ca. Cattarns and F.<br>Prom. Ashurst and Son<br>Dt. J. C. and H. Fresh-<br>field  |
| Lacy and B.<br>William Batty<br>A. Digby<br>Wyche<br>Amory and Co.<br>Cox and S.  | Bailey and another<br>English<br>Cole<br>Lowe<br>Taylor, P. O.<br>Alcock (stayed)   | S. J. Sharp<br>S. J. Hales<br>S. J. Forbes and others<br>S. J. Penn<br>S. J. Black<br>S. J. Corporation of the Royal<br>Exchange Assurance  | Pro. Cardale and Co.<br>Tro. C. Pearson<br>Pro. Sudlow and Co.<br>Pro. Campbell and W.<br>Pro. Stevens and L.<br>Dt. Paxon<br>Prom. Simpson and Co.<br>Pro. Reyveux and B.<br>Pro. Jennings<br>Pro. Downes, G. and S.<br>Pro. Elmslie and P.<br>Tro. Sharpe, F. and Co.<br>Pro. Chilcote<br>Dt. Person<br>Dt. Swan<br>Tres. Spiller<br>Pro. H. and C. Hall<br>Covt. Sprigge<br>Pro. Oliver<br>Pro. In person<br>Pro. Lloyd |
| Roy and Co.<br>King and B.<br>Gell and H.<br>Warter<br>Dawes and M.<br>Marson and D.  | Bosanquet, pub. officer<br>Falkner<br>Dickinson<br>Sherlock and another<br>Bury<br>The Universal Salvage<br>Company   | S. J. Maclean<br>S. J. Waller<br>S. J. Bradley<br>S. J. Brown<br>Blogg, admix.<br>Jones   |  |
| J. C. and H. Freshfield<br>Dawes and Son<br>Lewis and L.<br>Champion and B.<br>G. Ashley<br>Cox and S.<br>Hughes, K. & M.<br>Hubbard<br>Pritchard<br>Ashley<br>J. C. and H. Freshfield<br>Crafts<br>Lacy and B.<br>Brough<br>Watson, B. and Son<br>Walford, (Customs) | Storm and others<br>Tucker, Secy., &c.<br>Bunn<br>Cotton and another<br>Pridmore<br>Roberts and another,<br>Berkley<br>Cook<br>Deneulain<br>Davis<br>Featherstonhaugh<br>Crook<br>Bailey and another<br>Hooper<br>Hooper<br>The Queen | S. J. Guimariens and others<br>S. J. Roberts and others<br>S. J. Lind<br>Swan<br>S. J. Ward<br>S. J. Ridgway<br>Keimp<br>S. J. Tanner<br>Marchness, of Conyngham<br>Phillips<br>Wall<br>Phillips<br>Moore<br>S. J. S. Chambers<br>S. J. Leaf<br>S. J. Gooch and Cousn | Vallance for Gooch—<br>Lapard for Cousins<br>and Johnston  |

|                      |                               |                           |  |
|----------------------|-------------------------------|---------------------------|--|
| Cox and S.           | Knight and others             | S. J. Faith and another   | Covt. Farquhar and L.                        |
| Aston and W.         | Smith                         | Richmond                  | Dt. Miller and H.                            |
| Roche and Co.        | Ries                          | Bennett                   | Pro. C. Jay                                  |
| Butler               | The Queen                     | Worley                    | Indt. De Medina                              |
| Norton and Son       | Dawson                        | S. J. Sinclair            | Pro. Walton                                  |
| Williamson and H.    | Riley                         | S. J. Malins and others   | Dt. Fry and Co.                              |
| Young and J.         | Governors of Harrow School    | S. J. Rigby               | Covt. Nelson, P., & W. R.                    |
| Burrell and Son      | Hooper                        | Smith                     | Pro. E. Smith                                |
| Boucher              | Wallis                        | Richards                  | Pro. Nind                                    |
| G. Holman            | Sirr                          | Sirr, clk.                | Dt. Maples and Co.                           |
| Thrupp               | Macqueen                      | Oliverina                 | Pro. Fry, L. and F.                          |
| Pearson              | The Queen                     | S. J. John Thomas         | Indt. Hobler                                 |
| Manning              | Cumming                       | S. J. Cox                 | Pro. Flodgate                                |
| Cox and Co.          | Smith                         | Hunter                    | Pro. Buchanan                                |
| Gregory, F., and Co. | Bellew                        | Flood and another         | Covt. Rhodes and L.                          |
| Starling             | Newman                        | Parry                     | Hughes, K., and M.                           |
| Maples and Co.       | The Great Western Railway Co. | S. J. Laws                | Dt. Baylis and D.                            |
| Same                 | Scott, (P. O., &c.)           | Shaw and another          | Pro. Tribe for Shaw—<br>Guillaume for Broady |
| Lucena               | Inglis                        | Dixon, clk.               | Covt. Taylor                                 |
| Same                 | Same                          | Dixon                     | Covt. Smith and A.                           |
| Champion and B.      | Sayer                         | Swan                      | Wilkinson                                    |
| M. B. Miller         | Forsyth, (pauper)             | West                      | Pro. G. Clark                                |
| Maples and Co.       | Welch                         | S. J. Griffin             | Ca. B. Field                                 |
| B. Wilson            | The Queen (pauper)            | Parkin                    | Indt. Hadwen                                 |
| Bush and M.          | Bush                          | Morrison                  | Pro. Weller                                  |
| Peterson and Son     | Anderson and others           | S. J. Lindsay and another | Pro. Weymouth and G.                         |
| Same                 | Simes and others              | Gomersall                 | Pro. Sudlow and Co.                          |
| W. Tato              | Gravatt                       | S. J. Lea                 | Pro. Elmslie and P.                          |
| Amory and Co.        | Withers                       | Andrew                    | Pro. Gregory and Co.                         |
| Scard                | Defries                       | Littlewood and another    | Pro. Austin and H.                           |
| Gustard              | Doe d. Balch and another      | Robinson                  | Ejt. Pollock                                 |
| Young and Son        | Pavitt and others             | Norman                    | Dt. Trail                                    |
| Same                 | Nestle and another            | Niel                      | Pro. Chisholme and Co.                       |
| S. King              | Keeling and others            | Warren                    | Dt. Pain                                     |
| Triston              | The Queen                     | S. J. Hardey              | Cons. Walter and P.                          |
| C. Young             | Emerson                       | Burton                    | Dt. Lloyd                                    |
| J. B. May            | Freeman                       | Miles                     | F. I. Hale, B. and Co.                       |
| Williamson           | Udall and another             | S. J. Chodwick            | Ca. Cox and S.                               |

## Common Pleas.

|                      |  |  |                         |
|----------------------|--|--|-------------------------|
| Lowless and Son      | Mantzgue   | S. J. St. Katherine's Dock Com-<br>pany                                | Trov. Oliverson and Co. |
| Bevan and G.         | Backhouse  | S. J. Maitland   | Prom. Loaden            |
| Cattarns and Fry     | Brown  | S. J. Chapman  | Prom. W. W. & R. Wren   |
| Shearman and Son     | Finnis and another   | S. J. Laws   | Dt. Wright and B.       |
| Bevan and Goodeve    | Richards   | S. J. The London, Brighton, &<br>South East Coast Rail-<br>way Company | Sutton and Co.          |
| G. Pearson           | The Society of the Go-<br>vernors and Assistants<br>of the New Plantation<br>in Ulster &c. | S. J. Tyrell   | Prom. In person         |
| Dery                 | Egg  | S. J. Lumley   | Dt. E. Jennings         |
| Mardon and P.        | Maund and others   | S. J. Baxendale and others   | Ca. Tatham and Co.      |
| Bevan and Goodeve    | Morsom   | S. J. Wilshire   | Dt. Wilkinson and R.    |
| J. M. Minter         | Tassell  | S. J. Cooper   | Dt. Same                |
| Same                 | Same   | S. J. Same   | Ca. Same                |
| W. Melton            | Turner   | S. J. Hamilton   | Dt. Hill                |
| Wyche                | Davis and others   | S. J. Malcolmson   | Ca. Simpson             |
| C. W. & C. H. Lovell | Pinkus   | S. J. London & Croydon Rail-<br>way Co.                                | Ca. Burchell and Co.    |
| E. W. Lander         | Morton and others  | S. J. Fletcher   | Prom. Cox and Stone     |
| Desborough and Y.    | Swaby  | S. J. Sutton, jun.   | Prom. Sutton and Co.    |
| E. Fuller            | Larchen  | S. J. Mytton   | Prom. G. S. Ford        |
| Finch and S.         | Williams   | S. J. Maitland   | Ca. T. G. Everill       |
| Sare                 | Crane  | S. J. James and another  | Prom. W. B. James       |
| Lawrence and P.      | Groom and others, assig-<br>nees   | S. J. Bird and another   | Trov. Kirk              |
| Oliverson and Co.    | Burton   | Cross  | Prom. Baylis and D.     |

|                       |                               |   |                            |
|-----------------------|-------------------------------|---|----------------------------|
| Chamberlayne and M.   | Shaw                          | S. J. Holmes  | Dt. E. Willan              |
| Cattlin               | Barker                        | S. J. Beaucherk   | Prom. Parkes and Co.       |
| Same                  | Colyer                        | S. J. Saine   | Dt. Same                   |
| H. Chester and Son    | Forest                        | S. J. Carter, Esq.  | Dt. Stevens and G.         |
| Amory and Co.         | Elster and another            | Mathieson   | Prom. Keddell and Co.      |
| Cotterell             | Navone                        | S. J. Hadden and another  | Cov. Johnson F. and L.     |
| Same                  | Devaux and another            | S. J. Conolly   | Prom. Maples and Co.       |
| W. Smith              | Marten                        | Peacock   | Ca. H. Martineau           |
| J. D. Williams        | Sharland                      | S. J. Leifchild   | Prom. Brigg and Co.        |
| G. Rutherford         | Grissell and another          | James   | Prom. Hook                 |
| Sadgrove              | Hallett                       | Lumley  | Ca. Shoubridge and Co.     |
| Venning and Co.       | Stuart                        | Cox   | Prom. Davies and S.        |
| Leigh                 | Kitching                      | S. J. Johnson   | Prom. Elmslie and Co.      |
| G. J. Shaw            | Layland                       | Robson and others   | Dt. C. Robson              |
| Surr and Gribble      | Lee                           | Seymour   | Dt. W. A. Jackson          |
| Hoppe and Boyle       | Gibson                        | S. J. Carter and another  | Ca. Ellis                  |
| L. Jacobs             | Ayre                          | S. J. Smith   | Ca. Few and Co.            |
| L. W. Williams        | Cottam and another            | Burton  | Dt. H. Lloyd               |
| Addis and Guy         | Dickens                       | Davis   | Ca. J. Wells               |
| W. S. Long            | Jacques                       | Cooper  | Sanders                    |
| Philp                 | Killick                       | Eglinton  | Prom. Thompson             |
| Cotterill             | Moss and another              | S. J. Smith and another   | Prom. C. Walton.           |
| Same                  | Same                          | S. J. Forster   | Prom. Same                 |
| Same                  | Same                          | S. J. The Corporation of the<br>Royal Exchange Assur-<br>ance Company |                            |
| Lofty, Potter and S.  | Anderson                      | S. J. Leigh   | Covt. Freshfield           |
| N. Bennett            | Davidson                      | Bohn  | Prom. Rickards and W.      |
| Marten and Co.        | Muggeridge & anor.            | S. J. Trier and others  | Ca. Smith and Son.         |
| Minet and Smith       | Lewis                         | Campbell  | Prom. Tatham and Co.       |
| A. Jones              | Pawson and another            | S. J. Carter, sen.  | Dt. Lawrence and Plews     |
| Addis and Guy         | Harris                        | White   | Prom. Milne and Co.        |
| Wickens               | The Elect. Tel. Com.          | S. J. Nott and others   | Dt. Chester and Son        |
| Same                  | Same                          | S. J. Gamble and others   | Ca. Wilson and Harrison    |
| Same                  | Same                          | S. J. D. P. Gamble and others   | Same                       |
| Taylor and Solomonson | Levy                          | S. J. Alexander and another   | Prom. McLeod and S.        |
| G. and C. Kempson     | Pritchard                     | S. J. Taylor  | Covt. Walthew              |
| Hill and Heald        | Russell                       | Mercer  | Prom. E. Lambert           |
| Same                  | Taylor                        | Bryant  | Prom. Waller, jun.         |
| Ashley                | Somervill                     | Hawkins   | Ca. Sutton, Ewins, & Co.   |
| J. Hudson             | Hardingham                    | Allen   | Dt. & Dtue. Lofty, Potter, |
| Adams                 | Rizzi                         | Foletti   | Dt. Taylor [and Son        |
| H. W. Valance         | Alton, Clk.                   | Coghlan, Clk.   | Prom. T. G. Norcutt        |
| Town                  | Thistleton, admor.            | S. J. South - Eastern Railway<br>Company                              |                            |
| Hill and H.           | Miniaeff and another          | S. J. Reade and another   | Ca. Corner                 |
| Glynes                | Simmons                       | Sunley  | Prom. Scott and Co.        |
| Finch and Shepherd    | Brown, Esq., Chamber-<br>lain | S. J. Bain  | Dt. W. L. Howell           |
| J. R. Chidley         | Delvalle                      | Granville   | Dt. J. Coppock             |
| Lott                  | Bayley                        | Wilkins   | Prom. Appleyard            |
| E. F. Phillips        | French                        | Callow  | Prom. Rowland and Co.      |
| H. Empson             | Hitchins                      | Brown   | Dt. G. F. Hudson           |
| Same                  | Bailey                        | Alexander   | Ca. C. Fiddey              |
| John Williams         | Unett                         | S. J. Ashlen  | Prom. Thomas Jones         |
| S. Martin             | Martyn and another            | HGuse and Ux. and anor.   | Prom. McLeod and S.        |
| Whitelock             | Smith and another             | Stanley, Bt.  | Dt. Hayton                 |
| S. Yates              | Capua                         | Scott   | Prom. Chilton and Co.      |
| M. B. Miller          | Fisher and another            | Jones   | Prom. Hutchison            |
| C. Townshend          | Green                         | Slack   | Dt. Nash                   |
|                       |                               |   | Tres. Randall              |

Exchequer of Pleas.

|                   |                     |                            |                         |
|-------------------|---------------------|----------------------------|-------------------------|
| Swan              | Conway              | McDonough                  | Pro. Chaplin            |
| E. Smith          | Prichard            | S. J. Hughes               | Pro. Barrell and Son    |
| Chatfield and Co. | Wambersie & another | S. J. Phillips and another | Pro. Oliverson and Co.  |
| M'Leod and S.     | Nesbitt and others  | Wedd.                      | Pro. Hilleary           |
| Same              | Gould and another   | Same                       | Pro. Same               |
| Capes and S.      | Black               | Humphrey                   | Pro. Pilcher            |
| Bell and Co.      | Stevenson           | Guillaume                  | Pro. Guillaume          |
| Cox and Co.       | Flight              | S. J. Rollings             | Covt. James             |
| Harrison          | Clark               | S. J. Newsam               | Tres. Oliverson and Co. |

|   |  |   |  |
|---|--|---|--|
| Stretton<br>Freshfields   | Bartlett<br>Smith  | S. J. Gee and others<br>Royal Mail Steam Packet<br>Company  | Ca. Brooke   |
| Tilson and Co.<br>Tatham and Co.<br>G. Bower  | Middleton<br>Burton<br>Lloyd and others  | S. J. Beresford<br>Jeffries<br>S. J. Patent Galvanized Iron<br>Company  | Ca. Crowder and M.<br>Pro. Baxter and Co.<br>Pro. Gedye  |
| Donne and T.<br>Hodgson<br>Hand<br>Spike<br>A. MacA. Low<br>Raw<br>H. G. Smith<br>J. Rogerson<br>Miller and H.<br>Walton<br>J. C. & H. Freshfields<br>Cotterill<br>Goddard and Eyre<br>Dawes and Sons<br>Wadeson and M.<br>H. J. Adcock<br>R. Ford<br>Braham<br>J. B. May<br>H. Lloyd<br>Same | Alexander<br>Seaver<br>Landon<br>Ponsford<br>Whitworth and another<br>Williams<br>Brain and another<br>Robinson<br>Hargreaves and others<br>Sinclair<br>Pearse and another<br>Brooks<br>Ratcliff and another<br>Nunn and others<br>Williams<br>Goodison<br>Briggs<br>Braham<br>Knight and another<br>Claudet and another<br>Same | Buchanan<br>Smith<br>S. J. Beisley<br>S. J. Bradley and others<br>Hearder<br>S. J. Caldecott<br>Walters<br>Middleton and others<br>Tipper<br>S. J. Dawson<br>Hughes and another<br>S. J. Nicol, chairman, &c.<br>Lindsey<br>S. J. Turpen<br>Moore<br>Clare<br>Warry<br>Evans<br>Rowe<br>Rushbrooke<br>Stevens | Pro. Fry and Co.<br>Dt. J. Barber<br>Pro. E. Lewis<br>Dt. Vallance and Co.<br>Pro. Hartings<br>Pro. Yallop<br>Dt. Ashurst and Son<br>Dt. Rowland and Co.<br>Pro. Capes & S.—Holmes<br>Dt. Fourdrinier [ & Co.<br>Pro. Norton and L.<br>Dt. Burrell and Son<br>Pro. Sharpe and Co.<br>Pro. Willoughby and J.<br>Pro. Wire and C.<br>Pro. S. E. N. Cooper<br>Dt. Butt<br>Pro. Raven<br>Pro. C. Lewis<br>Pro. Sleep<br>Dt. Yates and Co.<br>Dt. Carpenter |

## ADJOURNMENT DAY.

|  |  |   |  |
|--|--|---|--|
| Tatham and Co.<br>Shield and H.<br>White and B.<br>Tatham and Co.<br>Same<br>Fox<br>Weymouth and C.<br>Gregory and Co.<br>T. Tyrrell   | Clark<br>Shaw and another<br>Borrett<br>Mackintosh and another<br>Dawson<br>Mayor, &c., of Poole<br>Sturge<br>Jones<br>Londonderry and Cole-<br>rairie Railway Co.<br>Martinez and others<br>Myers<br>Blagden<br>Hale  | Chaplin<br>S. J. Ralli<br>Johnson<br>Mitcheson<br>Brinton<br>S. J. Morcom<br>S. J. Haldemand<br>S. J. Rowett<br>Bradley<br>Alanson<br>S. J. Universal Salvage Co.<br>S. J. Jones<br>S. J. Richardson  | Pro. Winter and C.<br>Pro. Oliverson and Co.<br>Pro. Howard<br>Pro. Sorrell<br>Pro. Phillpot<br>Dt. Bigg<br>Pro. Oliverson and Co.<br>Pro. Keightley and Co.   |
| Gale<br>G. Bower<br>Oliver<br>Hill and Smith   | Grayson<br>D'Arcy<br>Clayton and another<br>Harris<br>Lilley<br>Pitt<br>Wadbrooke<br>Phillips<br>Routh and another<br>Fruhling and others<br>Mitchell<br>Duke, knt., and others<br>Scott<br>Sage<br>Appleton and another<br>Windsor and another<br>Franco<br>Same<br>Andrew, admix., &c.<br>Stevens and others<br>Shaw, (P. O. &c.)<br>Wreford and another<br>Whitfield<br>Edgar and another<br>Groom and ors., assignees<br>&c.<br>Wickes<br>Hamilton and another | Hepple<br>Lambert<br>Threlfall<br>Jones<br>Cohen<br>Ritson and others<br>S. J. Tudor<br>S. J. Cookes and another<br>Corrigall<br>S. J. Dickson<br>Clark<br>Hayward<br>Burley, jun.<br>Robinson<br>Deaker and others<br>De Brinas<br>Evans<br>Same<br>Napier and another<br>Richardson<br>Hand<br>Young<br>McCallum and Worley<br>Middleton<br>Redsull<br>Tanner<br>Hunter and another | Dt. H. Crocker]<br>Pro. Norris and Co.<br>Dt. Wyche<br>Iss. Smith<br>Pro. Richardson, Smith,<br>and Sadler<br>Pro. Plumtree<br>Pro. Few and Co.<br>Dt. Skirrow<br>Pro. Meredith & Reeves<br>Dt. Sidney<br>Dt. Cotterill<br>Pro. Gregory and Co.<br>Pro. Cox and Stone<br>Pro. Same<br>Pro. J. G. Walford<br>Dt. Boulton<br>Dt. Tripp<br>Pro. Holme and Co.<br>Pro. Sidney Smith<br>Pro. Gadsden and Flower<br>Pro. Oliverson and Co.<br>Pro. J. Bird<br>Pro. Same<br>Case, Peace and Jones<br>Pro. De Medina<br>Pro. E. Jennings<br>Dt. Linklater and Co.<br>Dt. Browne<br>Pro. Separd and Co. |
| G. Vincent<br>Chappell<br>Gregory, F. and Co.<br>J. Wilkinson<br>Letts<br>Morris and Co.<br>Lander<br>Cotterill<br>J. E. Fox<br>Druce and Son<br>De Medina<br>Curtis<br>J. Wilkinson<br>Hodgson<br>Ellis<br>Same<br>J. Bower May<br>Same<br>Callow<br>Stevens and Co.<br>Crosby and C.<br>Simpson and Cobb<br>Storey<br>Phillips and Son<br>Murray<br>Fearnley<br>Crowder and M. |  |   | Dt. Wright and B.<br>Dt. Rowlatt<br>Covt. Johnstone and F.   |

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 29, 1848.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

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## RETAINER OF QUEEN'S COUNSEL BY THE GOVERNMENT.

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It has been suggested that the observations contained in our last number, with reference to the retainer of Sir Fitzroy Kelly in the case of *Buron v. Denman*, in the first instance for the plaintiff, and subsequently for the defendant, are liable to be misunderstood, as reflecting upon the whole body of her Majesty's counsel, whilst the objectionable proceeding commented upon is only chargeable, in any view, upon two of the members of that body—the Attorney-General and Sir Fitzroy Kelly. An anxious desire to abstain from prejudging the merits of a question, on which neither of the distinguished persons named have yet had an opportunity of being heard either in explanation or justification, perhaps induced a cautious generality of expression open to misconstruction; but nothing could be more manifestly unjust—and therefore further from our intention—than to throw upon her Majesty's counsel collectively the discredit of proceedings which, it is to be hoped, standing as they do next after the judges, they will be as ready as any other class in the profession to repudiate and condemn.

The whole case, as at present presented to the public, lies in a very narrow compass, and is extremely simple. Sir Fitzroy Kelly happens to have been, for some years, the chosen and retained advocate and counsel of a foreigner, who—in a right cause or a wrong, it matters not which—has thought fit in one of our courts of justice to assert his claim for damages, in respect of some

alleged injury committed by the direction of an officer of the government. The Admiralty,—the department under which the officer who is defendant acted,—interposes, and undertakes his defence. The Attorney-General, as representing the government, assumes the conduct of that defence, and it is imputed to him, that in the exercise of a questionable prerogative, he selects from the ranks of her Majesty's counsel, numbering nearly one hundred, Sir Fitzroy Kelly, the only member of that body whom the plaintiff had already retained, consulted, and confided in, and in right of his office as Attorney-General requires him to abandon the cause of the client whose retainer he had accepted, and to transfer his services and assistance to the adverse party. Sir Fitzroy Kelly's share in the transaction is said to be, that he tamely submitted—so far as we have yet learned, without remonstrance or protest—to the requisition of the Attorney-General, and justifies a departure from the acknowledged rules of the profession, by pleading the paramount obligation arising from his position as a sworn servant of the Crown.

During the present week it was publicly stated, that the Admiralty, at the suggestion and upon the advice, as it was said, of the Attorney General, had dispensed with the services of Sir Fitzroy Kelly, who did not propose to appear either for plaintiff or defendant in the approaching trial. This announcement, however, appears to be premature. The true state of the matter, we have no doubt, will be found correctly related in the following letter, addressed to the Editor of the *Daily News*:

"BURON V. DENMAN.

"SIR,—I am desirous of correcting an error in your paper of this day, on the subject of Sir Fitzroy Kelly's retainer for the plaintiff in the above-mentioned action, relative to the nature of the communication addressed to me by the Lords of the Admiralty. In this communication their lordships announce to me, not that 'the Crown will dispense with the services of Sir Fitzroy Kelly in the further conduct of this important cause,' but they merely state 'that they have again referred the question respecting Sir F. Kelly to the Attorney-General, with the expression of their earnest wish that he may find it compatible with his duty to recommend to the Crown, under the peculiar circumstances of the case, to dispense with the services of Sir F. Kelly.' I have not since been informed of the determination the Attorney-General has come to upon the question; and, therefore, I can scarcely assume that the result of the reference to him will be such as anticipated in your article of this morning. I beg the favour of your correction of this mistake.

"GEORGE GUN HAY.

"44, Lincoln's Inn Fields, Jan. 24."

"The course pursued by the Admiralty, as disclosed by Mr. Hay's letter, evinces a becoming deference for public opinion on the part of those who preside over that department. It leaves the professional question, however, just where it was. The fact is notorious and beyond all doubt, that Sir Fitzroy Kelly was seer in the Court of Exchequer, at one time acting as the leading counsel for the plaintiff in *Buron v. Denman*, and at a subsequent period (on the day appointed for the trial at Bar) sitting at the right hand of the Attorney and Solicitor-General as counsel for the defendant! We may presume that the law officers of the Crown did not go into court in so important a case without a consultation. Did Sir Fitzroy Kelly attend that consultation and give his best advice against the client who had previously retained him? It is impossible not to feel that a line of conduct so unusual requires, and we trust will receive, some satisfactory explanation. It has been whispered, and may turn out to be the fact, that whilst Sir Fitzroy Kelly filled the office of Solicitor-General, the Lords of the Admiralty had expressed their determination to defend the action against Captain Denman, and that Sir Frederick Theaiger, then the first law officer of the Crown, thought it his duty to prohibit a person filling so prominent a position as Sir Fitzroy Kelly from continuing to act as counsel to a private individual. This aim was resisted by the Crown. It may have been supposed that this circum-

stance put an end to the retainer which Sir F. Kelly held from the plaintiff, and left him open to a retainer on the part of the government when Sir John Jervis assumed the office of Attorney-General. It is hardly necessary to say, that this would, in our view, afford no justification of the facts disclosed to the public in Mr. Hay's petition, although it would not be a whit more monstrous than the doctrines asserted and acted upon by leading members of the Bar on the subject of retainers, in a hundred cases which have never become the subject of discussion.

The duty of the body of Queen's Counsel collectively in this matter appears to us to be clear. They are the guardians of the honour of the Bar, and if, upon inquiry and ascertainment of the facts, they find that a principle has been violated, which involves the character of the profession, and the independence of their own grade at the Bar, the station and position of the offenders furnish an additional reason for the expression of a firm and determined resolution of condemnation. Silence on their part will be, not unfairly, construed as amounting not merely to acquiescence but approval. Not long since, the benchers of the Middle Temple resorted to the extreme length of disbarring a member of that hall, practising as a provincial barrister, upon a complaint, that he had communicated to one litigant party in a cause, information derived from the other in the character of a counsel. The unfortunate gentleman who was the subject of that, we presume, just censure, has retired from the profession, and we believe, left the country. If that signal example was just and necessary, can the circumstances now made public pass without notice from the heads of the profession? If this instance remain unquestioned and unrebuked, it becomes a precedent, and those who wear silk gowns will have to blame themselves, should they hereafter find their honour assailed, or their professional reputation sacrificed upon the impulse of a despotic or malicious disposition, which a concurrence of adventitious circumstances may invest with a tyrannous discretion. If the law be, as stated by Sir Fitzroy Kelly, that those entitled to wear silk gowns, when called upon by an Attorney-General, have no choice but must obey, under the obligation of an oath, the law should be altered, or the professional relation between her Majesty's counsel and the public at large, must be placed upon a very different footing. It cannot be necessary to remind a body so learned, sagacious, and conversant with the

affairs of mankind, as the Queen's counsel, that in resisting the undue exercise of authority, it is often neither prudent nor dignified to wait until we are personally attacked.

## NEW BANKRUPTCY AMENDMENT BILL.

It seems that Lord Brougham, unsated with the triumphs he has obtained by his numerous, varied, and we wish we could add, successful experiments, in legislating upon the Law of Debtor and Creditor, has already a fresh Bankruptcy Amendment Bill prepared. The fact was publicly announced by Mr. Serjeant Goulbourn in the course of last week, at the Court of Bankruptcy, upon the occasion of delivering a judgment, where an application was made to re-hear a case in which a certificate had been refused. The learned commissioner stated, that Lord Brougham had done him the favour to forward a copy of a new bill which he had prepared, and which gave the commissioners in bankruptcy the power to vary and rescind their own orders. Upon inquiry, we find that the bill has been printed, at the public expense, but that it is indorsed "For private circulation," and we are therefore prevented at present from laying its provisions before our readers. It is reported, we know not upon what authority, that it is intended to abolish the courts of the district commissioners in the country, and to transfer the jurisdiction now exercised by them to the judges of the county courts. As we have no doubt the proposed measure will be laid before parliament shortly after it has been re-assembled, it would be idle to anticipate the discussion which the subject must then undergo. We need scarcely repeat our cordial concurrence with the expression of opinion contained in the report of the Manchester Law Association, (published in our last,) as to the pressing necessity for a material alteration in the law of bankruptcy, and of the great importance and public benefit that must result from the legal societies co-operating with the commercial community, to render its administration just, useful, and satisfactory. It is sufficient now to add, that we altogether despair of any legislative amendment worthy of the name, which is not introduced upon the responsibility, and carried through parliament with the undivided influence, of government.

The subject is too serious, the evil too extensive, the interests involved too im-

portant, to allow of its being again entrusted to even the most prudent and successful experimentalist. The merchants and traders have plainly and decidedly pointed out the defective principles of the existing law, and the government must rely on those whose practical knowledge renders them competent to suggest the manner in which the required improvements should be effected. In such matters, neither great industry nor great parts can supply the want of practical experience.

## LAW OF WILLS.

1 Vict. c. 26, s. 9.

### EXECUTION AND ATTESTATION.

WE resume our review of the decisions on the construction of this act so far as regards the due execution and attestation of wills.

IV. The signature must be made or acknowledged by the testator in the presence of two witnesses present at the same time. 1. It was at first doubted whether the acknowledgment permitted by the act was not confined to those cases only where the signature was made for the testator by some other person, and therefore, that an acknowledgment by a testator of a signature made by *himself* would not be sufficient, but it was decided in the *Goods of Regan*, 1 Cur. 908, that the act extends to both cases. The act requires the signature to be acknowledged, and where therefore a testatrix produced a paper to the witnesses, and told them it was her will, and asked them to sign it, which they did, but she did not sign it in their presence, nor did they see any other part of the will than that on which they wrote their names, and there was no evidence that it was really signed at that time, the acknowledgment was held insufficient. In *Goods of Trinder*, 3 No. of Cases, 275; *Hudson v. Parker*, 3 No. Ca. 236, where the question was very elaborately considered by the court. So, where the deceased requested two persons to sign a paper for him, which they did, but the paper was so folded that the witnesses did not see any writing whatever on it, it was held not an acknowledgment within the statute. *Hott v. Genge*, 3 Cur. 160. The deceased having signed her will, produced it before two witnesses, saying, "Sign your names to this paper," which they did. There appears to have been no attempt by the testatrix to conceal her signature, or any part of her will from the witnesses, but it is not stated that they saw the signature, or that the will was entirely written by the deceased. Probate was refused. In the *Goods of Ann Rawlins*, 2 Cur. 326.

But it is not necessary that a testator should say, "This is my signature," a virtual acknowledgment will be sufficient. It was observed in *White v. The Trustees of the British Museum*, 6 Bing. 310, "In the execution of

wills, as well as that of deeds, the maxim will hold good, '*non quod dictum, sed quod factum est, inspicitur.*' A testatrix, being in a declining state of health, requested D. P. Gladwin to make her will, which he did, and after he had read it over to her, she signed it in his presence and in the presence of Elizabeth Tuck and Elizabeth Martin, but Elizabeth Tuck alone subscribed her name as a witness. A day or two afterwards, Gladwin and Tuck being with the deceased, Gladwin suggested to her that he thought there should be two witnesses, upon which the deceased immediately sent for William Habgood and James Carter, for the purpose of their witnessing her will. On their arrival they went into deceased's bedroom, when Gladwin produced the will, and told the deceased that they had come as she requested for the purpose of signing their names as witnesses to it, to which she replied, "I am very glad of it, thank God!" whereupon Habgood and Carter signed their names to the will in the presence of the deceased, both being present at the same time. The court held this a sufficient acknowledgment. In *Goods of Warden*, 2 Cur. 334. The rule as to virtual acknowledgments is, that when a paper is proved to have been in the hand-writing of a testator, and the signature was clearly and visibly apparent on the face of it, the production of that paper to two witnesses present at the same time, accompanied with a request to them to subscribe it, is a sufficient acknowledgment of an unquestioned signature. In *Goods of Ashmore*, 3 Cur. 753; *Hlott v. Genge*, *ubi supra*; *Kerwin v. Kerwin*, 3 Cur. 607. In *Goods of Philpot*, 3 No. Ca. 2; In *Goods of Thomson*, 4 No. Ca. 643. Where a testator produced a will all in his own hand-writing to the witnesses, and requested them to put their names underneath his, the paper being so folded that they could see nothing but his signature, it was held sufficient. *Gaze v. Gaze*, 3 Cur. 451. A testator spread the will, all in his own hand-writing, on a table before the witnesses, saying it was his will, and requested them to sign it, which they did, and, although the witnesses would not swear the deceased's signature was made previously to their subscribing, their impression being rather that it was not, the court held the acknowledgment sufficient, presuming, from all the circumstances, that the will was signed before it was produced to the witnesses. *Blake v. Knight*, 3 Cur. 547.

2. The attestation and subscription by the witnesses must be in the presence of the testator; and as the signature of the testator must also be made or acknowledged in the presence of the witnesses, it will be convenient to consider both together.

As to what constitutes "presence" within the meaning of the act the decisions are contradictory. In one case where the witnesses went into another room and subscribed the will, it was held not sufficient. In *Goods of Newman*, 1 Cur. 914. In another case, under similar circumstances, the same decision was

come to, on the ground "that it was impossible for the deceased to see the witnesses." In *Goods of Coleman*, 3 Cur. 118; and in *Goods of Ellis*, 2 Cur. 395, probate was refused for the same reason, although it was proved that when the witnesses subscribed they were so near to the testator that they could hear him breathe. In these cases the question was only as to whether the subscription by the witnesses was made in the presence of the testator, his signature having been clearly made in the presence of the witnesses. But in *Newton and another v. Clarke*, 2 Cur. 320, the question arose upon both points, and there Sir H. Jenner held that where the testator executes his will in the same room where the witnesses are, and they attest it in that room, it is an attestation in the presence of the testator, although they could not actually see him sign, nor the testator actually see the witnesses sign.

In *Newton v. Clarke*, the word 'presence' was held to have a more extensive meaning than was given to it in the cases which arose upon the corresponding section in the Statute of Frauds; but as the present enactment is based upon that; the same words being used in both, these cases will, no doubt, govern the construction of the present act, and it may therefore be doubted whether that decision will be followed.

The 5th sec. of the Statute of Frauds, after enacting that all devises of lands shall be in writing, and signed by the devisor or by some other person in his presence and by his express direction, goes on—"and shall be attested and subscribed in the presence of the devisor," being the same expression as in the 9th sec. of 1 Vict. c. 26, "and shall attest and shall subscribe the will in the presence of the testator." In treating of this part of the Statute of Frauds, Mr. Jarman says, "The design of the legislature in making this requisition evidently was, that the testator might have ocular evidence of the identity of the instrument subscribed by the witnesses; and this design has been kept in view by the courts in fixing the signification of the word 'presence,'" and he states the test to be, not whether the testator was or was not in the same room with the witnesses; but whether they were *within his view*; and that it was not indispensable that he should see the witnesses subscribe, but it was enough if he might see. Jarman on Wills, vol. 1, p. 74, *et seq.*

Now, if the legislature, in the recent act, had the same design as in the former one, viz. that the testator might have ocular evidence of the identity of the instrument subscribed by the witnesses, it is evident that although the testator and the witnesses were in one room, this design would be defeated if they could not see each other. Mere contiguity is nothing. With reference to signing a paper, if the parties cannot see each other, whether the distance by which they are separated be great or small, makes no difference: a witness can have no more knowledge of whether the testator signs



or not, and the testator can have no more knowledge of whether the witness subscribes or not, in the one case than the other. In *Doe and Wright v. Manifold*, 1 Maule & Sel. 294, it was expressly decided that it was not enough that in another part of the same room the testator might have perceived the witnesses, if in his actual position he could not.

Lord Ellenborough said: "In favour of attestation, it is presumed that if the testator might see, he did see; but I am afraid that, if we get beyond the rule which requires that the witnesses should be actually within reach of the organs of sight, we shall be giving effect to an attestation out of the deviser's presence, as to which the rule is, that where the deviser cannot by possibility see the act doing, that is out of his presence." (Jarman on Wills, 1 V. 77.)

Then, with respect to the signing by the testator, the present act enacts, in emphatic terms, not only that it shall be done in the presence of the witnesses, but that they "shall attest and shall subscribe the will," in his presence. But if they cannot see him how can they attest, or, in other words, bear witness? The words, "in the presence of the testator," seem intended to refer to the subscription only, in order to prevent that being made anywhere else, but they are superfluous in relation to the attestation, which must necessarily take place in his presence. If the construction put upon the Statute of Frauds be departed from, great uncertainty and inconvenience will arise, since the moment it is admitted that it is not essential the testator should be able to see the witnesses, and they him, the question arises as to which is the precise distance from each other within which the attestation will be sufficient, a question to which it is difficult to see how a satisfactory answer can be given.

In the case of a blind testator, if the circumstances are such as would satisfy the statute if he could see it will be sufficient. Thus, the testatrix being blind, the witnesses subscribed in another room; but it being proved that, if she had had her eyesight, she could have seen the witnesses, probate was granted. In *Goods of Piercy*, 1 Robinson, 278.

V. The witnesses must attest and subscribe the will in the presence of the testator.

1. The words of the statute are emphatic: "shall attest and shall subscribe," clearly requiring two distinct acts to be performed. Subscription alone is not sufficient. The meaning of "attest" was thus given by Dr. Lushington in his elaborate judgment in *Hudv. Parker*, 3 No. Ca. 236:—"To 'attest' is to bear witness to a fact; a notary public attests a protest—he bears witness, not to the statements therein contained, but to the making such statements—to the making and signing the instrument. So I conceive that the witness, in the case of a will, attests or bears witness to all that the statute requires the attesting witness to know: and what is that? That the signature was made or acknowledged in his presence. The statute says, 'no form of

attestation is necessary;' but still he must attest, though the outward mark of such attestation may be his subscription only."

If the witness subscribe by mark, it will be sufficient. In *Goods of Ashmore*, 3 Cur. 756.

The subscription must be made by each witness personally, the statute requiring that the witnesses (in the plural) shall subscribe. Therefore where a witness subscribed his own name and wrote that of the other witness also, it was held not a compliance with the act. In *Goods of Mead*, 1 No. Ca. 456. In *Goods of White*, 2 No. Ca. 461.

But if the subscription be made by the witness himself it will be sufficient, though his name be written by means of the other witness guiding his hand, he himself being unable either to read or write. *Harrison v. Elwin*, 3 Q. B. Reports, 117, S. C., 27 L. O. 290. The witnesses must subscribe after the testator has executed; if they subscribe before it will be bad. *Hookey v. Jones*, 2 No. Ca. 59.

2. Although not expressly required by the statute, the witnesses must subscribe not only in the presence of the testator, but also in the presence of each other. Where, therefore, a testatrix executed her will in the presence of William Tuck, who then in her presence subscribed his name as a witness, and on a subsequent day acknowledged her signature in the presence of William Tuck and of A. L. Overton, both being present at the same time, and Overton subscribed in the presence of the testatrix and of William Tuck, but the latter did not subscribe again; it was held not to be a compliance with the act. Sir H. Jenner remarked: "The natural construction of the words of the act, which are in the future tense, seems to be, that when the signature is made or acknowledged, the witnesses shall then attest it, not one at one time and one at another." In *Goods of Allen*, 2 Cur. 331. A similar decision was given under the same circumstances. In *Goods of Simmonds*, 3 Cur. 79. And the witnesses must actually subscribe in the presence of each other, an acknowledgment of a subscription previously made not being within the act. *Moore v. King*, 3 Cur. 243, S. C., 31 L. O. 476. On the 8th August, 1842, the deceased made a codicil in the presence of his sister, Mrs. Coape, who subscribed her name as a witness in his presence, no other person being present. In a subsequent part of the day the deceased's medical attendant, Sir D. Davies, paid him a visit, on which occasion the deceased requested Mrs. Coape to give him the codicil, and shewing it to Sir D. Davies, said, "This is a codicil to my will, signed by myself and by my sister, as you will see at the bottom of the paper; you will oblige me if you will also add your signature, two witnesses being necessary." Sir D. Davies thereupon placed the paper upon a chest of drawers by the bedside of the deceased and subscribed his name, Mrs. Coape, who stood beside him, saying, pointing to her name, "There is my signature, you see; you had better place yours underneath." Probate was refused.

The statute declares that no form of attestation shall be necessary, the object evidently being to avoid creating the additional difficulty and source of mistake which the requisition of one particular form would have given rise to. It is hardly necessary to say, that notwithstanding an attestation clause is not essential, it ought never to be omitted. If there be none, or being one, it be imperfect, the will cannot be proved, at least in the Prerogative Court, unless the witnesses make affidavit of its due execution; and if any length of time have elapsed between the execution and the proof, they may not be easily found, or may have forgotten the circumstances. And although where the witnesses cannot be found, and there is no opposition, the court will dispense with the affidavit, (in *Goods of Luffman*, 5 No. Ca. 183,) yet if they be forthcoming the will must stand or fall chiefly upon their testimony. On the other hand, where the attestation clause is perfect, the will is admitted to proof, as a matter of course, unless it be opposed; and even then very strong testimony will be required to invalidate it. Thus, where one witness swore that the will was duly executed, and the other (Stanley) swore positively the signature of the testator was neither made nor acknowledged in his presence, the court upheld the will, remarking that the witness whose evidence went to invalidate it spoke from recollection two years and a half after the transaction; "moreover, there is the evidence of the attestation clause, signed by Stanley, vouching that he had witnessed the signing of the will by the testator, by the fact of subscribing his name to the clause, and to the three sheets of the will: I have his act against his deed. It must be evident that it is a matter of most serious consideration, if the rights of parties are to depend on the recollection of witnesses at any distant period of time." *Gove v. Gower*, 3 Cur. 151. See also *Blake v. Knight*, 3 Cur. 547. And where one of the witnesses negatived its due execution, and the other could remember nothing about it, there being a formal, though not a perfect attestation clause, the court, although with some hesitation, decreed for the validity of the will, considering the circumstances sufficient to raise the presumption that all was rightly done. *Shield v. Shield*, 4 No. Ca. 647.

The attestation clause although perfect, will not however prevent the necessity of proving the due execution of the will, if probate be opposed, and it is therefore prudent to call the witnesses' attention at the time they subscribe the will to the fact, that all the requisites stated in the attestation clause have been observed. This is not always attended to in practice. The witnesses are frequently informed merely where they are to subscribe, and when they are unprofessional, are often not aware they are signing their names to any statement of their own at all. In such cases it is not surprising that when called on, perhaps years afterwards, to depose as to what took place, they should recollect nothing but that they

subscribed the will. But if the attestation were read over to them, and it were pointed out to them that all the circumstances stated in it had taken place; that the testator had signed, in their presence; that they were both present at the same time; and that they subscribed in the presence of the testator and of each other;—their memory would probably retain these facts, or at least they would recollect that the clause was read to them before they subscribed, and this alone would, where the witnesses were free from suspicion, give the greatest possible support to their signatures. It would also be a useful precaution if a note were made by the solicitor of the clause having been so explained.

The form of attestation is so well known, that it is not necessary to give one here. It should contain a statement that all the requisites of the act had been complied with, including the subscription by the witnesses in the presence of each other. It is advisable also to state, that the witnesses subscribe as witnesses at the request of the testator, since it has been held with respect to a promissory note, that where a person who saw the note signed subscribed his name as a witness, without the knowledge of the maker of the note, that he was not an attesting witness but a mere volunteer. *McCraw v. Gentry*, 3 Camp. 232. If there be anything special in the case, as if the testator be blind or unable to read, the attestation should include a statement that he knew the contents of the will, or that it was read over to him previous to its execution. In short, every circumstance necessary to support the will should be stated in the attesting clause.

## LAW OF LANDLORD AND TENANT.

RENT NOT RECOVERABLE WHERE NUISANCE ALLOWED TO EXIST.

To the Editor of the Legal Observer.

SIR,—The profession is indebted to your correspondent, J. C. W., for the report which appeared in your number of the 8th instant, of the case of *Reynolds v. Lucking*, (p. 234, ante,) and the accompanying remarks; but it appears to me that he has not put the decision in *Hart v. Windsor* (12 M. & W. 68) upon the right ground, and as the point is one of great practical importance, perhaps you will allow me room for a few remarks upon the subject.

Your correspondent states the case of *Reynolds v. Lucking* to be important "as distinguishing the wide difference between the law in cases where the tenant holds by written contract or by parol;" and Mr. Cooper is reported to have argued "that *Hart v. Windsor* was distinguished from the present case (*Reynolds v. Lucking*) inasmuch as there the defendant held under a written contract, and must be presumed, at the time of entering into such contract, to have had full knowledge of every circumstance, and might, by stipulation in the contract, or at least he had it in his power to

do so, provide against being compelled to continue in possession, or remain liable for the rent of a house infested like the present; whilst the present defendant had no such advantage, the contract, or rather *letting*, being simply by *parol*, and he was, therefore, remitted back and protected by the general principle of law, viz., that he so became the tenant of this property, under an implied warranty that the house was *habitable*, free from the nuisance complained of; and he was therefore entitled to have a beneficial occupation." The inference raised is, therefore, that where the contract is in writing the case falls within *Hart v. Windsor*, and the tenant must pay rent notwithstanding the nuisance; but if the contract is *parol* only, the tenant is liable for the rent for so long only as he has a beneficial occupation of the premises.

Now I conceive that the decision in *Hart v. Windsor* was not founded on the circumstance of the contract being *in writing*, but on the contract constituting an *actual demise* of the premises. In delivering the judgment of the court, Parke, B., states, at the very commencement, "The declaration is not for *use or occupation*, but on an agreement in the *nature of a lease*," and that the principal argument for the plaintiff was, "that where there is an *actual demise* of the unfurnished fabric of a specific messuage for a term, there is no contract implied by law on the part of the lessor, that the messuage was at the time of the demise, or should be at the commencement of the term, in a reasonably fit and proper state and condition for habitation, (that is, so far as concerned the fabric,) though it was demised and let *for the purpose* of immediate habitation," and in this argument the court concurred. He afterwards says, "The point to be considered, then, is, whether the law implies any contract as to the condition of the property demised, where there is a *lease* of a certain ascertained subject." "The question relates to a case of *actual demise* of a specific tenement." "The simple question is, what is the implied obligation on the part of the landlord to his tenant, under a *lease* of a house for years." "It appears, therefore, to us, to be clear upon the old authorities, that there is no implied warranty on a *lease* of a house, or of land, that it is or shall be reasonably fit for habitation or cultivation. The implied contract relates only to the estate, not to the condition of the property."

It appears to me, therefore, that the true distinction between *Hart v. Windsor* and *Reynolds v. Lucking* is, that the former was an action for *rent* reserved on a lease, while the latter was for *use and occupation* on an agreement only; and that the former case decides, that where there is an *actual demise* the tenant is liable to the rent, notwithstanding he has no beneficial occupation of the premises, and the latter that, in an action for *use and occupation*, where there is no actual demise, he remains liable so long only as the beneficial occupation can be had.

The distinction is rendered the more important in consequence of the recent act enacting, that every lease shall be by deed; the consequence being, that if the doctrine in *Reynolds v. Lucking* be established, it will apply to every tenancy by *parol* or agreement only.

A. B.

## PROVINCIAL LAW SOCIETIES.

"In our last number we devoted a considerable space to the reports made by the several committees of the Manchester Law Association, and the Provincial Law Societies' Association, and we extracted the statements in one of the speeches relating to the progress and present state of the Metropolitan and Provincial Law Societies' Association.

These Associations are of so much importance, and have excited so much interest in the profession, that we shall make some further extracts from the principal speeches at the late anniversary meeting of the Manchester Law Association, held on the 13th inst.

Mr. Joseph Grave, president of the association, filled the chair. On his right were William Jenkinson, Esq., Mayor of Salford; Mr. Falcon, of Liverpool; Mr. Norris, of Liverpool; Mr. James Crossley, of Manchester; Mr. Snowball, of Liverpool; Mr. John Hope Shaw, of Leeds; Mr. S. Heelis, Mr. H. H. Statham, of Liverpool, &c. On the chairman's left were John Lord, Esq., Mayor of Wigan; — Bridson, Esq., Mayor of Bolton; Edw. Marsland, Esq., Mayor of Stockport; — Beaumont, Esq., Mayor of Warrington; Mr. Thomas Taylor, honorary secretary of the association; Mr. Morse, of Jamaica; Mr. Vaughan, &c. The vice-presidents were Mr. Charles Gibson, Town-Clerk of Salford, and Mr. J. F. Beever, of Salford. Amongst other gentlemen present were Messrs. C. Lewis, Richard M. Whitlow, Jas. Street, J. H. Hulme, E. Herford, N. Earle, William Heron, F. Robinson, W. S. Rutter, T. P. Bunting, James Gill, R. B. B. Cobbett, Frederick Broadbent, T. T. Bellhouse, &c.

The *Chairman*, in proposing "The Manchester Law Association," said, that though the primary object of their association was to maintain and advance their own rights, privileges, and interests, he was persuaded that the principal benefits of the association accrued to the public at large. If any one asked him what were the advantages arising from the association, he would invite him into that room, and placing him in an elevated position, say, "*Circumspice*." "See how a large number of lawyers, though placed in constant antagonism with each other, can meet and sit at the same table with the greatest good humour, manifesting to each other the most sincere friendship." The pleasure was their own, but the advantage resulted to their clients and the public. By

associating with each other, legal gentlemen became acquainted with their several and many virtues, and learned to repose mutual confidence; and now, when any dissension arose, the practice was, by friendly conference and the fullest and most confidential disclosures, to endeavour to stop that bad blood and expense which were the natural fruits of litigation. And for this, attorneys did not get paid. They were only paid for getting people into law, but received nothing for the greater virtue of getting them out of it again. Indeed, he might say of the profession, that "suffering is the badge of all our tribe." Look at the conduct of the legislature affecting the administration of the law; and he would defy any man to say that the association had ever obstructed any measure practically beneficial to the public; but on the contrary, had rendered to every such measure their best assistance, and many such measures had, indeed, been suggested by themselves. They did from their hearts detest, abominate, and abjure that quackery in the name of "law reform," which consisted in the exercise of his powers by every empiric in parliament, towards a sort of catholicon, or "Every man his own lawyer." This sort of treatment the association resisted, because persuaded that the doctors would poison their patients: but when any measure was introduced in either house of parliament, likely to be beneficial to the public, they had given to it their hearty support. Witness their conduct with respect to the County Courts Act. They got nothing out of that; on the contrary, a large amount of "fees due and accustomed" were taken out of their pockets by it; but they believed it would be better for the public to have a large amount of law, even roughly administered as it was in those courts, and therefore they had given the measure their support, as they should every other which they deemed to be really for the benefit of the public.

Mr. *Beaumont*, Mayor of Warrington, was proud to belong to the profession, to the advancement of which this association devoted its energies. Lord Bacon had said that every man owes something to his profession, and some lawyers owed to their profession a great deal; they owed to it independence and station, and they would best repay that obligation by endeavouring to raise a profession not meant for the benefit of lawyers only, but for that of the public; for the benefit of all, the character of the practitioners who were to administer the law should be raised; they should take their station in the upper ranks of society, and be conversant with the most influential classes, because, by that means, they would be most likely to place the law in its proper position, and preserve it from its bane—pettifoggery and chicanery. Lawyers would best consult the public interest by taking, with regard to legislation, the course indicated by the chairman. It was not change that was dangerous, but ill-considered change. They would best exercise their true vocation by vigi-

lantly watching all the measures of the legislature, which, often emanating from persons who know nothing of their practical workings, though very fine in theory, often proved either very dangerous or utterly useless in practice.

Mr. *H. H. Statham*, of Liverpool, proposed "The Metropolitan and Provincial Law Association," which was responded to by Mr. *Shaw*, of Leeds, whose speech we quoted fully last week.

Mr. *James Street*, proposed "The Provincial Law Societies' Association," which he said was composed of various local societies throughout the country, having one common place of meeting, and where the interests of the profession in common were discussed and considered. Through the medium of this association, since they met in that room last year, an object of considerable importance to the profession at large had been obtained,—the formation of the metropolitan and provincial association. It was not the character of professional men to fail in gratitude, and he trusted, therefore, that they would continue to support that association which had given birth to so fine and vigorous an offspring as the larger association.

Mr. *Falcon*, president of the Liverpool Law Association, in acknowledging the toast as an *ex-officio* member of the provincial association, described the earlier efforts and operations of the Liverpool Society as entirely confined to the collection of a law library; but, stimulated by the larger sphere of operations of the Manchester association, they also enlarged their aims and objects, and this change led to a connection between the two associations, which he thought neither had any reason to regret. From this joint action, and similar circumstances of other influential societies in the north, particularly those of Leeds and Lincoln, they were all drawn into one focus, and thus formed one united association. First, individuals formed themselves into local societies, and then these united together to constitute the provincial association, from which had sprung the larger one representing the profession throughout the kingdom.

After many other speeches in honour of the several principal guests who were present,

Mr. *Lord*, mayor of Wigan, responded, expressing his great regard for the profession to which for 35 years he had had the honour to belong; and he believed that these associations were of great benefit to the public, when based on considerations such as Mr. *Shaw* had so ably set forth. No man at all acquainted with the law of England, but must feel that the legislature, in our recent legislation, much needed the aid and suggestion of those better informed and with more experience of the working of laws than themselves.

Mr. *F. Robinson*, in proposing "The Manchester Chamber of Commerce, and the Manchester Commercial Association," referred to one subject of interest to the whole country, and within the province of these two commercial, no less than of the various law associations—the law of debtor and creditor. The

state of that law imminently demanded the attention of these bodies and of the public, as was evinced by the fact that upwards of 60 millions a-year were lost in bad debts! The *Times* had emphatically called the law of debtor and creditor "the question of the day;" and he thought it could not much longer escape that share of the public attention which its importance demanded. Perhaps lawyers were not always the best law reformers; at all events, though several recent acts had passed to alter, amend, and explain the law of debtor and creditor, still no law on the statute book was felt by commercial men to be in a state of greater confusion, or more unsatisfactory. There was a society in London for the reformation of the law of bankrupts and insolvents, and it would be desirable to form societies in this district to co-operate with it. The theory of the law of debtor and creditor he took to be very simple. It was, that where a person was unable to discharge his liabilities in full, the most should be made of his estate, and the proceeds should be equally divided amongst his creditors. If honest, he should get a release; if fraudulent, he should be punished. The difficulty was in carrying out the practical details of this principle; and, by the union of such associations as the Manchester Chamber of Commerce, the Commercial Association, and the Manchester Law Association, much good might be effected. He thought it was for the commercial bodies to take the initiative, and he was sure the law associations would aid them to remedy a state of the law which all admitted to be most disgraceful.

Mr. R. B. Cobbett, in proposing "The Committee of the Manchester Law Association," said, if they had not done all they might, it was, he thought, because they had not received all the support from the members generally to which they were entitled. There had not been the same rage for what were called "law reforms" last year, but the report showed the committee's continued and unflinching attention, from day to day, to the interests of the society and the profession; which must have entailed on them greater labour and sacrifices than any efforts, however energetic, in reference to particular acts of legislation.

The *Chairman* next gave the health of "The Honorary Secretary," who was emphatically the association,—the pilot guiding them through every storm, directing them to every question requiring consideration; ever at his post, most diligent and assiduous in giving his best services; and, by his courtesy, good feeling, and attention to the interests of the association and of the public at large, he had enabled the association to render great service to the community.

Mr. Thomas Taylor, (of the firm of Rowley and Taylor,) the honorary secretary, in acknowledging the toast, said he had seen the society, year after year, for nine years, increasing regularly in utility and importance, and if any exertions of his had in any way contributed to this, it was to him a satisfactory and sufficient return.

The *Chairman*, in giving "The Bar of England," said the association had no jealousy of, or antagonism towards, that branch of the profession; however they might disapprove of the system of giving offices of honour and emolument to young men who had scarcely digested their forensic mutton. But from the bar were taken those men of independence and incorruptibility, who were the admiration of the world,—the judges of the land; and it was therefore their duty, on all festive occasions, duly to honour "The Bar of England."

Mr. Charles Gibson, town-clerk of Salford, and a vice-president, in giving "The president of the evening," said that Mr. Grave had been raised to the high position of president of the association, later than a man of his talent had a right to expect, but still while comparatively a young man; and that by virtue of his high talent, deep and extensive legal knowledge, and above all, by his universally admitted integrity.

The *Chairman*, in acknowledging the compliment, said it was one of the highest distinctions of his life to be placed at the head of an association which, with some five or six exceptions, (men of unblemished honour, but of "cantankerous" spirit) numbered amongst its members every man of respectability in the profession in this and surrounding towns. Since the more intimate connection which this association had given him with his professional brethren, he had conducted his business more pleasantly and more advantageously to his clients; for he could go to a professional brother, and confidently disclose to him the whole of his case, and receive from him an equally confidential communication, and they could thus settle differences which it would be utterly impossible to do, if members of the profession did not constantly meet in friendly intercourse in the society's rooms. He did not at all exalt the advantages of the association, when he said that the pleasure was for its members, the advantage for their clients.

Mr. N. Earle, in proposing "The Vice-Presidents," adverted to a branch of practice springing up, which was not only remunerative, but highly honourable to the profession. He meant where a client consulted his solicitor, in confidence, on matters of the most delicate consideration, and of great personal importance; difficulties which could not be disclosed to others, family differences, &c.; and he urged the importance of attorneys encouraging this branch of their practice, by being at all times ready to give their best, most honest, and upright advice to the clients who thus entrusted them confidentially.

Mr. J. F. Beever, (of Beever and Darwell,) one of the vice-presidents, in acknowledging the toast, said it had often been to him a matter of surprise and regret, that while there existed in Manchester a "Commercial Clerks' Association," there was no "Lawyers' Clerks' Association." In London, there was "The United Law Clerks' Society," which, by a small monthly contribution, aided by the donations of the profession, had for many years

successfully carried out its benevolent objects. The book-keeping, accounting, collecting, engrossing, and copying clerks of attorneys, were a numerous and intelligent body, including men of tried and sterling integrity, of unwearied application, and of considerable attainments,—men fully competent to organise and carry out such an association. He was sure the aid of the profession here would not be less liberal than that of their London brethren; that their committee-room would be open to the gratuitous use of the committee of such a society; that they should be happy to see its principal officers on occasions like the present; and that their own president and secretary would feel honoured by invitations to the annual dinners of the Clerks' Society. He hoped what he had said might lead to the establishment of such a society in Manchester, to relieve the superannuated and sick, the fatherless and the widow.

## QUESTIONS AT THE EXAMINATION.

*Hilary Term, 1848.*

### I. PRELIMINARY.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

What do you understand by the words "Common Law?"

How long does a writ of summons remain in force, how may it be continued, and on what days and at what hours can it be served?

Where must a writ of summons be served on a defendant?

If it be impossible to serve a defendant personally with a writ of summons, how must you proceed?

Explain an appearance according to the statute.

What proceedings are necessary to render a cognovit a valid instrument?

How is the action of ejectment commenced, and is an equitable title sufficient to found this action?

How is a distress made for rent?

In case of a plea in abatement on the ground of the nonjoinder of a necessary party, what is a necessary accompaniment to such plea in ordinary cases, and what is the effect of the absence thereof?

What step must a defendant take to avoid the payment of costs, when a debt has been recovered against him in one of the superior courts, for the recovery of which a plaintiff might

have been entered in a County Court under the recent act?

When that step has been taken, is the plaintiff concluded, or can he raise the question for argument before the court?

How should a sheriff proceed if, after having levied an execution, a notice be served upon him that the goods belong to another?

Within what period must execution be sued out after judgment is signed,—and how is the judgment revived after the stipulated period has elapsed?

What is now necessary to charge the real estate of a party with a judgment which has been recovered against him?

What is an attachment?—Name some of the cases in which the court will grant an attachment.

### III. CONVEYANCING.

What is an equity of redemption?

Is a mortgagor ever, and when, barred of his equity of redemption, and what circumstances preserve his right?

If mortgage money be not paid at the time appointed, what are the remedies of the mortgagee?

Can copyhold estates be entailed?—and by what means?

How are copyhold estates usually alienated?

How is an estate in coparcenary created?—and what persons are usually coparceners?

Are fee simple estates, in the hands of the heir or devisee, liable to any, and what debts of the intestate or testator?

By what words may estates in tail male,—in tail general,—and in tail special be aptly created?

Is there any, and what difference between an estate in jointure and an estate in dower?—State how they are respectively created.

A., by bargain and sale, conveys a fee simple estate to B. and his heirs, to the use of C. and his heirs,—what estates, legal or equitable do B. and C. respectively take?

A., under a power, appoints a fee simple estate to B. and his heirs, to the use of C. and his heirs. What estates, legal or equitable, do B. and C. respectively take?

An estate is conveyed to the use of A. for the life of B., and after B.'s death, to the use of the heirs of the body of A. What estate does A. take?

An estate is limited to A. for life; remainder to trustees to preserve contingent remainders; remainder to the children of A. as he shall appoint; in default of appointment to B. and the heirs male of his body;—remainder to C. in fee. A. has no children. Can A. and B. make a marketable title of the property to a purchaser, and if so, by what assurances?

What formality is necessary to the validity of a will of real estate, and is there any and what distinction in this respect, between a will of real and of personal estate?

A. dies intestate seised in fee simple, leaving one daughter (B.), a son by a deceased daughter (C.), a son and a daughter by a de-

ceased daughter (D.), a daughter by a deceased son (E.), and two daughters by a deceased daughter (F.)—To whom will A's estate descend?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

State some of the principal cases in which relief is to be obtained through a court of equity.

In which of these cases can relief be obtained only through a court of equity?

State the principle upon which assets are marshalled by a court of equity.

State the cases in which it is peculiarly advisable to administer the estate of a deceased person under a decree of a court of equity, and the effect of a decree for that purpose with reference to these cases.

Does the circumstance of a person having proved his debt under a decree in any way, and how, affect his right to interest on his debt?

State the principle upon which the Statute of Limitations cannot be pleaded by a trustee in bar to the claim of his *cestui que trust*.

Explain the difference between the nature of the relief obtained by mortgage creditors through the medium of a court of equity and through that of a court of law.

State the general rule as to parties to a suit and whether it is relaxed in any, and what cases, and for what reason.

In what case is service of a subpoena on a defendant resident out of the jurisdiction effectual for the purposes of the suit,—and what is the preliminary course to be adopted in respect to such service, as distinguished from the service of a subpoena within the jurisdiction?

In what cases is it advisable for the defendant's solicitor to peruse and consider the effect of the bill immediately upon entering appearance, without waiting for the office copy, and for what reason?

If one of several parties, plaintiffs or defendants respectively to a suit dies *pendente lite*, in what cases is it necessary to bring his representatives before the court,—and how is it effected?

In what cases is it necessary to resort to a court of equity in support of a right which can be established only through a court of law?

In the case of a suit for the administration of the estate of a deceased person who has left children entitled to legacies or to the surplus of the estate, at what stage of the suit, and in what state of the proceedings, can an order be obtained for the allowance of maintenance to the children?

In the case of an infant entitled to a fund in court, and having a father living, what are the circumstances under which the court will order an allowance out of the income for the maintenance of the infant?

What is the distinction between a bill for discovery and relief and a bill for discovery

only, and in what respect do the proceedings on the two bills differ?

#### V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

What description of traders are now liable to the Bankrupt Laws?

Under what circumstances can a trader residing out of England, but who buys and sells in England, be made a bankrupt?

What is the amount of debt in respect of which a single creditor can petition to make a debtor a bankrupt? and what must be the amount of debts when two or three or more creditors are the petitioners? and under what statute prescribed?

Are aliens entitled to be petitioning creditors, and liable to be made bankrupts?—State the law on these points, and the different circumstances of alienage involved in it.

Is there any, and what limit, after an act of bankruptcy committed, for issuing the fiat, and by what statute?

Describe the mode of proceeding to make a debtor a bankrupt.

What is the distinction in the proceedings in the event of the bankrupt dying before or after the adjudication?

How are debts proved under a fiat, and when may a claim be entered instead of a proof?

Describe the respective rights and liabilities of the assignees in regard to leasehold property held by the bankrupt, and of the lessor of such property.

With whom does the granting of a certificate of the bankrupt now rest, and what is the effect of the certificate?

What proceedings must be taken by the assignees before commencing a suit, or referring to arbitration or compromising any matter relating to the bankrupt's estate?

If a creditor holding a legal mortgage is apprehensive his security is insufficient, what course must he adopt to entitle him to prove for the deficiency?

Is a trader entitled to any, and what notice of the adjudication, and to any, and what time to dispute the same?

Is there any preference, and to what extent, over the other creditors, allowed to a landlord for rent?

Describe some leading distinctions between the law relating to bankruptcy and insolvency.

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

State the mode of proceeding to obtain the liberation of a person improperly restrained of his liberty.

Why is it necessary in some cases to indict for an assault, instead of bringing an action?

In what cases are magistrates prevented from proceeding to enforce payment of church rates?

In an indictment for libel against the pro-



prietor of a newspaper, what evidence is required to fix his responsibility?

What are the requisites in an indictment for perjury?

What are the material points of evidence in an indictment for perjury?

State generally the legal definition of conspiracy.

In what cases can one person only be indicted for a conspiracy, and what averment is required?

What is the usual course adopted in practice to secure the attendance of witnesses in criminal cases?

What is the penalty for non-attendance of witnesses in such cases?

In what cases can the deposition of witnesses taken upon oath before magistrates or coroners be used as evidence upon the trial of prisoners?

What are the material and necessary points of evidence against a bankrupt for not surrendering?

What are the material and necessary points of evidence against a bankrupt for not discovering his property?

What is the mode of proceeding against a banker or agent for applying to his own use money or securities intrusted to him for a specific purpose?

What are the material and necessary points on which evidence is required in such proceedings?

## NOTES OF THE WEEK.

### SITTINGS AFTER TERM.—ARREARS.

ALL the courts of law have announced their intention of holding Sittings in Banco after Term, for the purpose of disposing of arrears. The Court of Queen's Bench will sit on Tuesday, the 1st of February, and the three following days, and on Tuesday, the 8th February, and the four following days. There will also be a sitting of that court on Saturday, the 26th February, only for the purpose of giving judgment in cases previously argued. The after-Term Sittings of the Court of Exchequer in Banc will commence on Saturday, the 5th February, and continue during the whole of the following week.

### THE BENCH AND THE BAR.

The local papers circulating in Hull and its neighbourhood contain addresses from the mayor and magistrates of the borough, and from several solicitors practising in the borough court, to T. C. Granger, Esq., the newly-appointed Recorder of the borough, in reference to what they denounce as "a wanton and unprovoked attack" made on the learned gentleman during the Sessions, by Mr. Dearsly, a member of the Bar practising at the Sessions. The addresses warmly commend the Recorder

for the temperate and forbearing conduct exhibited by him under great provocation. One of the reports states that the learned Recorder was affected even to tears. Surely the Inn of Court of which Mr. Dearsly is a member—the Middle Temple we believe—should interfere, and investigate a matter calculated to reflect so much discredit on the Bar.

### THE CROWN PAPER IN THE QUEEN'S BENCH.

The alterations in certain branches of the law, and especially in the Law of Settlement, has tended to swell the Crown Paper in the Queen's Bench to an unusual magnitude. On the first day of the present Term this paper contained a list of nearly eighty cases, which has been reduced during the Term only by twenty cases, so that there remains an arrear of nearly sixty cases. The court, with a praiseworthy intention of mitigating the inconvenience arising from such a state of things, postponed the hearing of all settlement cases, and selected cases of mandamus and those in which convictions were brought before them, as being of a more pressing nature, and involving questions in which the general public were more extensively and directly concerned. The course now adopted of deliberately selecting a particular class of cases and taking them out of their order, however well intended, is liable to many objections, and can scarcely fail to produce instances of individual inconvenience and hardship.

### THE CHIEF JUSTICE OF HONG KONG.

The latest accounts from China bring the very painful intelligence that the Governor, Sir John Davis, had, at the instance of Earl Grey, instituted an investigation into certain charges of intemperance made against Mr. Hulme, the Chief Justice. The local press more than insinuates that the charges have originated in vindictive feelings, and have excited strong feelings of public indignation. We may be permitted to express our strong conviction and earnest hope that those charges will turn out to be totally unfounded. Mr. Hulme was called to the Bar so far back as the year 1829, and was associated with the late Mr. J. Chitty in editing the valuable collection of statutes of practical utility. Mr. Hulme was appointed Chief Justice at Hong Kong, we believe, in 1843, and was esteemed by his contemporaries for his many amiable qualities. Those who knew him best in this country describe him as a person exemplary in all his private relations, and most unlikely to fall into habits of unbecoming excess.



## ATTORNEYS TO BE ADMITTED.

*Easter Term, 1848.**Queen's Bench.**Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

|   |                                     |
|---|-------------------------------------|
| Allin, Thomas Charles, 6, Park Hill Villas, Clapham   | Henry B. Wedlake, King's-bench-walk |
| Arnold, George, 38, Southampton-buildings; Tonbridge  | William Gorham, Tonbridge           |
| Avis, Henry, 25, Lincoln's-inn-fields   | John Carnell, Tonbridge             |
| Andrew, Richard Thomas Smith, Chorlton-upon-Medlock   | T. M. Vickery, Lincoln's-inn-fields |
| Adams, Alfred, 24, Dover-street, Piccadilly   | John Stevenson, Manchester          |
| Boys, Alfred William, 31, Finchley-road, St. John's Wood  | William Batty, Charles-street       |
| Bartlett, C. Leftwich Oldfield, 25, Prince's-street, Upper Stamford-street; Lambeth; Charminster; and Sutton Montis | W. W. Dyne, Lincoln's-inn-fields    |
| Barrett, John William, 8, Great College-street, Westminster; and Taunton  | J. Stone, Dorchester                |
| Bourne, James Samuel, 3, Wells-street, Gray's-inn-road; and Dudley  | James Waldron, Wiveliscombe         |
| Burchell, William, 34, Gordon-square  | C. Parsons, Temple-chambers         |
| Beedham, Braylesford Harry, Kimbolton and Howard-street   | J. G. Bourne, Dudley                |
| Barton, George Henry, 6, Bloomfield-terrace   | William Burchell, Red-lion-square   |
| Bridger, Edward Kynaston, 60, Torrington-square; Winchester; and Finsbury-circus                                    | G. Archer, Ely                      |
| Brown, Washington Hamilton, 54, George-street, Euston-square  | J. Beedham, Kimbolton               |
| Boxall, Edwin, 12, Soley-terrace; and Holford-square  | D. S. Bockett, Lincoln's-inn-fields |
| Broughton, Robert, 6, Falcon-square; and York-place, City-road  | E. Bridger, London-wall             |
| Bell, John Williams, 8, Symond's-inn; Gillingham; Yeovil; and Albert-terrace  | C. Bridger, Winchester              |
| Boyton, Francis James, 17, Clayland's-road, Kennington; and Milford-place   | F. Barnes, Winchester               |
| Burridge, Arthur, 8, Symond's-inn; Yeovil; and Bradford   | S. B. Lamb, Reading                 |
| Bell, J. Gillam, jun., 32 and 6, Store-street, Bedford-row; and Cambridge   | W. Hallows, Bedford-row             |
| Box, Edward, Buckingham   | F. Broughton, Falcon-square         |
| Brayley, George, jun., 14, Warwick-court; and Bideford  | J. Crick, Maldon                    |
| Barwell, Charles Dawson, New Bethlem-hospital; and Northampton  | J. Slade, Yeovil                    |
| Briggs, John Hall Newton, 8, Brunswick-terrace, Barnsbury-road; and 8, Claremont-place, Pentonville                 | W. R. Bell, Gillingham              |
| Brown, John George, Newcastle-upon-Tyne; and Coleman-street   | G. Penfold, Croydon                 |
| Brooks, William, 2, Lamb's-conduit-place  | Thomas Lyon, Yeovil                 |
| Baker, Joseph, Birmingham; and 13, Denmark-terrace, Pentonville   | Stephen Adcock, Cambridge           |
| Collyer, Andrew Alfred, 4, Seymour-place, Euston-square   | G. Nelson, Buckingham               |
| Cartwright, Augustus Frederic, Spalding   | G. Brayley, Bideford                |
| Cunliff, Henry, 28, Tavistock-place; and Preston  | C. Brittan, Northampton             |
| Collins, John, Newton-road, Bayswater   | J. Huish, Derby                     |
| Catterall, Paul, jun., Preston; 6, Wells-street, Gray's-inn-road; and Liverpool-street                              | W. Hallows, Bedford-row             |
| Christian, John, 2, Bury-place, Bloomsbury-square; Whitehaven; and Southampton-builds.                              | J. Brown, Newcastle-upon-Tyne       |
| Collins, Eli Earl, 7, Eldon-place, Bermondsey; Clarence-street, Old Kent-road                                       | James Brooks, Odiham                |
| Ching, William John, Montague-place, Russell-square   | W. Haines, Birmingham               |
| Clarke, Thomas Robert, 8, Charles-street, Chelsea   | J. Coverdale, Bedford-row           |
|   | W. H. Tatam, Spalding               |
|   | C. Harvey, Spalding                 |
|   | J. Walker, Preston                  |
|   | J. Cunliffe, jun., Preston          |
|   | J. B. May, Queen's-square           |
|   | P. Catterall, Preston               |
|   | Henry Perry, Whitehaven             |
|   | C. Flake, London-wall               |
|   | G. Harding, Great Russell-street    |
|   | J. Taylor, Fenchurch-street         |

- Cutler, William Henry, 11, Pratt-street, Camden-town  
 Cooper, James, 23, Lower Calthorpe-street; Reading; and Keppel-street  
 Cowburn, George, 15, Lincoln's-inn-fields  
 Cowdell, Alfred Burton, 22, Tonbridge-place  
 Carew, Norman, 15, Chester-terrace, Pimlico; and Devonport  
 Carter, Frederic Maurice, Gloucester  
 Compton, Charles Henry, 4, Alfred-place, Camberwell-new-road  
 Dale, Henry, jun., 16, Alfred-place, Bedford-square  
 Dobson, John, 57, Swinton-street, Gray's-inn-road; and Leeds  
 Durant, Thomas, jun., 7, Pembroke-terrace, Caledonian-road; and Sherborne  
 Dineley, Frederick, 30, Bloomsbury-square  
 Dickin, Robert Spencer, jun., 31, Great Marlborough-street; and Wem  
 Drummond, Nelson, Cockermouth  
 Durant, John Frederick, 40, Baker-street, Lloyd-square; Poole; and Upper North-place  
 Eltoft, Joseph, Manchester  
 Edwards, Robert, Stanley-cottage, near Ruthin  
 Etherington, Charles, Church-court, Clement's-lane; and Chatham  
 Eastley, Yard, 9, Artillery-place, Finsbury-square  
 Estlin, Alfred Laird, 17, Upper Calthorpe-street  
 Frost, Horace, 66, Judd-street; Kingston-upon-Hull; Warwick-court; Tavistock-place  
 Forbes, John, 26, Queen's-road, Bayswater; and Sunninghill  
 Fryer, William Henry, 36, Trinity-square, Southwark; and Sutherland-square, Walworth  
 Fellows, Harvey Winson, Rickmansworth; and 1, King's-bench-walk  
 Freame, Robert Sadler, 8, Symond's-inn; Albert-terrace, Hampstead-road; and Corsham  
 Friend, William Henry, 2, Ampton-street; Pakenham-street; Store-street; Canterbury  
 Francis, William, 59, Albert-street, Mornington-crescent; and Tranmere  
 Frost, John, 9, Collet-place, Commercial-road  
 Gross, Woolnough, 3, Cambridge-terrace, Islington; Eye; and Sidmouth-street  
 Guy, John Patinson, described as John Guy, York  
 Garland, Trevor Lorange, 33, Hyde-park-square  
 Gribble, John Charles, 3, Raymond-buildings; and Barnstaple  
 Gunton, John, Cheltenham  
 Gill, Frank Selby, 15, Devereux-court, Temple; and 8, Tillotson-place  
 Garbutt, Thomas, 32, Granville-square, Pentonville; and Yarm  
 Gard, Edward Oram, 2, and 16, Milton-street, Dorset-square; and Stoke  
 Guppy, Alfred, Honiton  
 Goldshede, Theodore, 8, Duke-street, St. James's; Hammersmith; and Kensington Gore  
 Hawkins, John William, Rectory Grove, Clapham; and New Boswell-court  
 Hartnoll, Thomas William, 5, Myddleton-square; and Exeter  
 Hooman, Henry, 38, Liverpool-street, New-road; Bewdley; and Arthur-street  
 Homfray, David, 17, Gower-place; Portmadoc; 8, Soley-place; Frederick-street  
 Husband, Sydney Otway, 48, Carey-street; Wem; Lower Calthorpe-street; 4 & 10, Mitre-court-chambers; Pelham-terrace, Brompton; East Moulsey  
 F. Cutler, Furnival's-inn  
 E. Vines, Reading  
 W. Cowburn, Lincoln's-inn-fields  
 D. S. Bockett, Lincoln's-inn-fields  
 W. Cowdell, sen., Hinckley  
 R. Few, Henrietta-street  
 C. C. Whiteford, Plymouth  
 J. Carter, Gloucester  
 Edward Frederick Leeks, 13, Swithin-lane, London  
 Henry Dale, North Shields  
 M. Bloome, Leeds  
 B. Chandler, Sherborne  
 R. Gamlen, Gray's-inn-square  
 J. Clift, Bloomsbury-square  
 William Owen, Wem  
 Robert Benson, Cockermouth  
 J. Durant, Poole  
 W. C. Chew, Manchester  
 E. Jones, Bryn Hyfryd, near Ruthin  
 W. A. Combe, Gravesend  
 P. Pearce, Newton Abbott  
 A. Estlin, Somerton  
 J. Lawford, Throgmorton-street  
 C. Frost, Kingston-upon-Hull  
 E. J. Jennings, Mitre-court-buildings  
 J. E. Moulden, St. Thomas-street, Southwark  
 G. M. Phillips, Laurence Pountney-lane  
 T. Fellows, Rickmansworth  
 J. T. Vining, Yeovil  
 G. Curteis, Canterbury  
 H. C. Kingsford, Canterbury  
 Thomas Dodge, Liverpool  
 T. Francis, Liverpool  
 Hugh Almond, Liverpool  
 B. Bodman, Budge-row  
 Thomas French, Eye  
 G. Leeman, York  
 W. E. Winter, Bedford-row  
 W. Gribble, Barnstaple  
 W. White, Moretonhampstead  
 C. J. Chesshyre, Cheltenham  
 W. Scrivens, Hastings  
 J. P. Phillips, Swithin's-lane  
 W. Garbutt, Yarm  
 S. Rouse, Plymouth  
 S. Walters, Basinghall-street  
 H. C. Mules, Honiton  
 P. Mules, Honiton  
 E. I. Sydney, Finsbury-circus  
 H. Richards, Duke-street  
 J. Hawkins, New Boswell-court  
 T. E. Drake, Exeter  
 J. Berry, Bewdley  
 D. Breese, Lincoln's-inn-fields  
 T. D. Browne, Wem

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| Hearn, Thomas Bayley, Ryde, Isle of Wight  | W. Hearn, Carisbrooke<br>J. H. Hearn, Newport  |
| Harrison, Francis John, 5, Southampton-street,<br>Bloomsbury-square  | H. Walker, Southampton-street  |
| Higginbotham, Robert Hall, Derby   | W. Williamson, Derby   |
| Harwood, Edward Morcom, 1, Granville-square,<br>Bristol; and Bedford-row   | F. Short, Bristol  |
| Halton, Charles, Whitehaven; and Carlisle  | W. Nanson, Carlisle<br>J. Musgrave, Whitehaven   |
| Hodgson, Richard Huddleston, 27, Cursitor-<br>street; and Bradford   | W. Wells, Bradford   |
| Hoskins, Edward, Gosport   | J. Hoskins, Gosport  |
| Hewitt, Arthur Turner, Clapham   | T. M <sup>c</sup> Cattlin, Ely-place   |
| Jones, John, Liverpool   | Already admitted an Attorney of C.P. at Lancaster  |
| Jubb, Henry, 2, New Millman-street; and Wath-<br>upon-Deane  | G. P. Nicholson, Wath-upon-Deane   |
| Johnson, Edward Davey, 12, Clifford's-inn; and<br>Pakenham-street  | W. H. Smith, Bedford-row   |
| Jones, Richard Beavan, Llanelly  | H. Jones, Llanelly   |
| James, Henry Brandram, 23, Ely-place, Holborn  | E. W. James, Ely-place   |
| Jessup, Benjamin, Norwich  | R. Kerrison, Norwich   |
| James, Henry Mountrich, 15, Chester-terrace,<br>Eaton-square; Heavitree; and Featherstone-<br>buildings                          | H. James, Exeter<br>E. W. Paul, Exeter   |
| Jones, John Parry, formerly called John Jones,<br>8, Charlton-place, Islington; Ruthin; and<br>32, Alfred-street, Bedford-square | J. V. Horne, Denbigh<br>C. Procter, New-square, Lincoln's-inn  |
| Keeling, Frederic John, 14, Calthorpe-street;<br>New Ormond-street; and Colchester   | F. P. Keeling, Colchester  |
| Kennett, Joseph W. Pilcher, Tottenham; and<br>Dover  | Matthew Kennett, Dover   |
| King, Alfred Hassall, 10, Lyon's-inn, Strand   | Alfred King, Paper-buildings<br>William B. Russell, Branston, & Paper-buildings  |
| King, Samuel Leyson Wickens, 22, Wilmington-<br>square   | Samuel King, 22, Wilmington-square   |
| Lyne, Thomas, Woodhouse, near Whitehaven;<br>Spring-place, Bagnigge-wells  | W. J. Lyne, Whitehaven   |
| Levy, Edward Laurence, 17, Norfolk-street, Strand  | C. Lewis, Grosvenor-street   |
| Leefe, Octavius, 5, Cumberland-terrace, Lloyd-<br>square; and Judd-street  | G. I. Fielding, Richmond, Yorkshire<br>T. Walker, Furnival's-inn   |
| Lloyd, Hugh, 57, Hatfield-street, Stamford-street,<br>Blackfriars; and Trallwyn  | P. Wright, Paper-buildings<br>C. S. Fallowdown, Paper-buildings<br>C. Attwaters, Paper-buildings<br>A. King, Paper-buildings |
| Longman, William Churchill, 8, Westbourne-place,<br>Eaton-square   | G. Stephens, Northumberland-street   |
| Lawrence, Nathaniel Tertius, 15, Gray's-inn-square   | W. Talbot, Kidderminster   |
| Lawrence, Philip Henry, 15, Gray's-inn-square  | M. D. Lowndes, Liverpool   |
| Leith, Frederick, 24, Tysoe-street; and 37,<br>King's-square   | John Mourilyan, Sandwich<br>Joseph Raw, Furnival's-inn   |
| Ley, Robert, 7, Wakefield-street, Middlesex; and<br>Ratcliffe Culey, Leicestershire  | John Thomas Pilgrim, Atherstone, Warwickshire  |
| Martineau, John Philip, 29, Montagu-place,<br>Russell-square   | A. W. Grant, King's-road   |
| Molineau, Joseph, Cordwainers'-hall, Great Distaff-<br>lane  | G. Philcox Hill, Brighton  |
| Moon, Joseph Dobson, 11, Soley-terrace, Penton-<br>ville; and Sunderland   | Robert Brown, Sunderland   |
| Meadows, John Osmond, 25, White-lion-street,<br>Islington; and Glastonbury   | Robert James, Glastonbury<br>George Mathias, Glastonbury   |
| Marshall, John Thomas, Eden-lodge, Beckenham,<br>Kent  | Henry E. Stables, Coptihall-court  |
| Marfleet, John Isnac, 13, Brook-street, Grosvenor-<br>square; and Keppel-street  | W. Slater, Manchester  |
| Moses, Thomas James, 1, Belmont-terrace, Lew-<br>isham   | A. R. Bristow, Greenwich   |
| Neck, William Alfred, Colchester   | I. S. Barnes, Colchester   |
| Noble, Thomas Shepherd, York   | Robert Henry Anderson, York<br>Charles Lever, King's-road  |
| Plews, Richard, 3, Clayland's-place, Clapham-<br>road  | E. Lawrance, Old Jewry-chambers  |
| Pratt, James, jun., York   | G. H. Watson, York<br>W. F. Clarke, York   |
| Pollard, George Octavius, 25, Dorset-street, Port-<br>man-square   | J. A. Powell, New-square, Lincoln's-inn  |

- Padley, Frederick John, 43, Liverpool-street ;**  
 Argyle-square; and Lincoln . . . . . **J. W. Danby, Lincoln**  
**Parson, Joseph William, 4, Pancras-lane; and**  
 Balham-hill, Clapham . . . . . **A. T. I. Baker, Pancras-lane**  
**Palmby, Francis Danby, Uttoxeter . . . . .**  
 Paul Waite, Uttoxeter  
 F. Blagg, Uttoxeter  
**Paitson, William, 24, Great Percy-street, Isling-**  
 ton; Cockermouth; and Dalby-terrace . . . . . **J. Steel, Cockermouth**  
**Phippard, William, 1, Regent-place; East Ware-**  
 ham; and Everett-street . . . . . **C. Bischoff, Coleman-street**  
**Phillips, Henry Druit, 17, Harpur-street, Grove-**  
 lane, Camberwell . . . . . **T. Phippard, Wareham**  
**Pattinson, Thomas, Haverstock-hill, Hampstead;**  
 and Kirkby Stephen . . . . . **James Phillips, Lawrence Pountney-lane**  
**Rodwell, Henry Blyth, 63, St. Andrew's-road,**  
 Southwark; Upper Norton-street; and Grove-  
 place, Camberwell . . . . . **Samuel Brabner, Liverpool**  
**Rutter, John Farley, 21, John-street, Bedford-row;**  
 and Shaftesbury . . . . . **Middleton Hewitson, Kirkby Stephen**  
**Reece, Richard, 6, North-place, Gray's-inn road,**  
 and Ledbury . . . . . **E. Norton, Diss**  
**Roumieu, John Thomas, 8, Regent-square . . . . .**  
 J. Day, Margaret-street  
 F. Brown, Margaret-street  
**Royle, Thomas Vernon, 22 A, Grove-end-road, St.**  
 John's-wood; and Manchester . . . . . **J. Rutter, Shaftesbury**  
**Ray, Henry Carpenter, Iron Acton, Gloucester . . . . .**  
 W. Reece, Ledbury  
**Rogers, Thomas, 61, Clarke-street, Mile-end-road;**  
 and Ruthin . . . . . **I. E. Walters, New-square**  
**Roberts, William, jun., Newnham . . . . .**  
 Edward Allen, Manchester  
 Henry Ray, Bristol  
**Smart, William Lynn, 5, Montague-street, Russell-**  
 square . . . . . **Edward Jones, Brynhyfryd, Ruthin**  
**Shackles, Charles Frederic, 14, Manchester-street,**  
 Gray's-inn-road; and Kingston-upon-Hull . . . . . **William Roberts, sen., Coleford**  
**Saltwell, William Henry, jun., The Grove, Highgate**  
 Shepherd, George, Beverley . . . . . **James Wintle, Newnham**  
**Shepherd, John Bullen, Coalbournbrook, near**  
 Stourbridge . . . . . **J. E. Buller, Lincoln's-inn-fields**  
**Smart, Collin, 17, Milman-street, Sunderland; and**  
 New Ormond-street . . . . . **G. L. Shackles, Kingston-upon-Hull**  
**Swinburne, Joseph Willis, 7, Featherstone-**  
 buildings, and Gateshead . . . . . **J. H. Benbow, Stone-buildings, Lincoln's-inn**  
**Selby, John Caleb, Sheerness; Tavistock-place;**  
 and Featherstone-buildings . . . . . **H. J. Shepherd, Beverley**  
**Spickett, Edward Colnett, 39, Torrington-square;**  
 and Bridgend . . . . . **William Hunt, jun., Stourbridge**  
**Shipworth, Philip George, Carlisle . . . . .**  
 John Harwood, Stourbridge  
**Stuart, William, Merridale, near Wolverhampton . . . . .**  
 Robert Smart, Sunderland  
 Thomas Swinburne, Gateshead  
 William Kell, Gateshead  
 William Bell, Bow-church-yard  
**Shoobridge, William Stephen, 7, Harper-street,**  
 Theobald's road; Tenterden; and Manchester . . . . . **K. King, Maidstone**  
**Semple, Horace John, 31, Pickering-place, Pad-**  
 dington; Portman-place, Edgware-road . . . . . **R. Edmeades, Sheerness**  
**Sladen, Douglas Brooke, 21, Soley-terrace, Amwell-**  
 street; Doughty-street; Brompton . . . . . **William Lewis, Bridgend**  
**Stark, Robert Mozley, 8, Halliford-street, Lower-**  
 road, Islington; and Wakefield . . . . . **S. Saul, Carlisle**  
**Strong, Sydney Gere Robert, 39, Jermyn Street;**  
 Colchester; and Great Portland-street . . . . . **William Clark, Wolverhampton**  
**Tizard, John, 9, Trelleck-terrace, Vauxhall-bridge;**  
 and Weymouth . . . . . **C. F. Sparrow, Wolverhampton**  
**Tucker, William Owen John, Park-cottage,**  
 Leyton, Essex . . . . . **Joseph Munn, Tenterden**  
**Townsend, Frederick, 24, Great Percy-street, Is-**  
 lington; Cockermouth; and Manchester-street . . . . . **Henry George Robinson, Half-moon-street**  
**Turnbull, Richard Carr, 17, Judd-street; Great**  
 Ormond-street . . . . . **George Fitch, Southampton-street, Bloomsbury**  
**Templer, Charles Copland, Greenwich; and**  
 Bridport . . . . . **William Tanner Neve, Cranbrook**  
**Toynbee, Robert, 14, Park-place, Bayswater;**  
 New Sleaford; Warwick-court; Albert-street,  
 Regent's-park . . . . . **Thomas France, Bedford-row**  
**Venn, Clement Henry, 14, Belgrave-street, New-**  
 road; and Alphington . . . . . **John Moore Janson, Wakefield**  
 R. I. Head, Exeter  
 C. D. Scott, Furniva's-ina

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| Warner, William Harding, 7, Millman-street, Bedford-row; Clapton; Clapham             | H. J. Harvey, Bath<br>G. Dawes, Angel-court                                  |
| Watson, Horace, 24, Hamilton-terrace, St. John's Wood                                 | E. Lawrance, 14, Old Jewry   |
| Whiting, Charles David, 14, Calthorpe-street; New Ormond-street; King-street, Holborn | J. E. Marshall, Cambridge  |
| Waddilove, Edward, jun., 59, Montague-square; and Leamington Priors                   | J. B. Hembury, Leamington Priors   |
| Wright, John, Romford   | E. H. Rickards, Lincoln's-inn-fields<br>William H. Clifton, Romford          |
| Walker, William, York   | William F. Clark, York   |
| Walker, Micajah Hilditch, 8, Red-lion-square  | William O. Tucker, Threadneedle-street                                       |
| Wilson, Edward, 7, Bennett-street, Stamford-street, Broughton; and Argyle-street      | Joseph Bray, Preston<br>W. R. Wilson, Preston<br>W. Clarke, Coleman-street   |
| Wilson, Thomas Abrahall, Worcester  | J. A. Wilson, Worcester  |
| Webb, Josiah Joseph, 8, Great Ormond-street; and Southsea                             | D. Howard, Portsea   |
| Warry, John, 38, Upper Berkeley-street; and New Sarum                                 | C. H. Radcliff, New Sarum  |
| Whitehouse, William Matthew Miles, 5, Gray's-inn-square; and Studley                  | Thomas James Rooke, Raymond-buildings  |
| Wilkinson, Joseph, York; and Manchester   | Thomas Ward, York<br>Henry Pearson, York                                     |
| White, Alexander Miller, 5, York-place, Fulham-road; and Colchester                   | Henry Griffin Dean, Colchester   |
| Whatley, George, 8, Lowther-cottages, Holloway  | George Lawson Whatley, Mitcheldean<br>George Becke, 21, Lincoln's-inn-fields |
| Wray, George Woodcock, 6, Lyon's-inn; and Leyburn                                     | John Topham, Middleham   |
| Winfred, William, 31, Hart-street, Bloomsbury-square                                  | Charles Addis, 10, Great Queen-street  |
| Wheeler, Norton, 18, Smith-street, Chelsea; and Lloyd-square                          | James Wheeler, Manchester<br>Samuel B. Merriman, Austin-friars               |
| Wisewould, James, jun., 14, Lacey-terrace, Newington, Surrey; and 20, Pall Mall       | William Dimes, Pall Mall   |
| Waite, John Anthony, 15, New Cavendish-street; and John-street, Adelphi               | William Henry Clapham, Great Portland-street                                 |

*Admissions in Easter Term, pursuant to Judges' Orders.*

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| Brown, Robert Harrison, Wakefield  | John Lofthouse, Leeds<br>Henry Brown, Wakefield                                   |
| Brooke, William Henry, Dudley  | Thomas Goode and John Bolton, Dudley  |
| Clarke, Samuel Thomas, 52, Tavistock-square  | Henry Julius Jones, 2, Church-court, Clement's lane; and Bury-street, St. James's |
| Hayward, Charles Edward, Bromfort; Maddox-street; Kensington; Easton-place; Winchester | Messrs. Todd and Waters, Winchester   |
| Ingledeu, William Daggett, Newcastle-upon-Tyne   | Messrs. Williams and M <sup>r</sup> . Leod, Inner Temple                          |
| Jones, John Humphrey, Pwllheli; Surrey-terrace; River-street; and Warwick-court        | Henry Ingledeu, Newcastle-upon-Tyne<br>Cyril Williams, Pwllheli                   |
| Walton, Edward, 19, Charrington-street, Camden-town                                    | David Erskine Forbes, 8, Warneford-court  |
| Windus, John William, 48, Judd-street, Brunswick-square                                | R. J. Butt, Great Russell-street  |

**DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.**

*From Dec. 21, 1847, to Jan. 21, 1848, both inclusive, with dates when gazetted.*

Brabner, Samuel, and George Haigh, Liverpool, Attorneys and Solicitors. Dec. 24.  
Browne, John, William Kingdon, and Charles Wilson, (practising under the firm of Coode, Browne, Kingdon, and Wilson,) 13, Bedford Row, Attorneys and Solicitors, so far as regards the said Charles Wilson. Jan. 18.  
Cross, William Blackwell, and William Ash, Bristol, Attorneys. Jan. 14.  
Drew, Thomas, and Charles Thomas Woos-

nam, Newtown and Llandiloes, Attorneys and Solicitors. Dec. 31.

Edye, Edmund, and Edward Farmer, Montgomery, Attorneys and Solicitors. Jan. 18.

Firth, Charles, and John Battye, Birstal, Attorneys and Solicitors. Jan. 4.

Ingleby, Clement, George Paulson Wragge, and William Rogers Cope, Birmingham, Attorneys and Solicitors. Jan. 4.

Jackson, William Oliver, and James Jenkyn, 11, John Street, Adelphi, Solicitors and Attorneys. Jan. 4.

Lea, William Welch, Edward Lawrence Gibbs, and Thomas Barnes Couchman, Henley-in-Arden, Attorneys, Solicitors, and Convey-

ancers, so far as regards the said William Welch Lea. Jan. 7.

Morgan, William, jun., and William Foster Batt, Abergavenny, Attorneys and Solicitors. Jan. 11.

Ogle, George, and Thomas William Young-husband, 4, Great Winchester Street, City, Attorneys and Solicitors. Jan. 4.

Richardson, Henry Francis, and Henry William Taylor, 4, Coleman Street, City, Attorneys and Solicitors. Jan. 11.

Towse, John Beckwith, and Robert Beckwith Towse, 24, Lawrence Pountney Lane, Solicitors. Dec. 31.

Walsh, James William, and John Duffin Thomson, 68, Lincoln's Inn Fields, Attorneys, Solicitors, Scotch, Irish, and Parliamentary Agents. Jan. 4.

Westbrook, Richard Austwick, and George Gisby, Ware, Attorneys and Solicitors. Jan. 4.

Whall, Robert, and Edward Levett Darwin, Chesterfield, Attorneys and Solicitors. Jan. 14.

Wilkin, Thomas Martin, and William Robert Mingaye, 8, Furnival's Inn, Holborn, Attorneys and Solicitors. Jan. 7.

Wright, Newenham Charles, and Thomas James Hanbury, 11, Finsbury Place South, Attorneys and Solicitors. Dec. 28.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From Dec. 21, 1847, to Jan. 21, 1848, both inclusive, with dates when gazetted.*

Barnes, Henry, Stockton-upon-Tees. Jan. 14.

Brabner, Samuel Peeling, Liverpool. Jan. 21.

Duffy, Richard Arthur, Nottingham. Dec. 21.

Grimley, Henry, Market Drayton. Dec. 21.

Haddock, Thomas, St. Helen's. Jan. 21.

Hargrave, George, Caistor. Jan. 21.

Lewis, Lauriston, Winterbotham, Cheltenham. Jan. 11.

Marshall, Frederick, Plymouth. Jan. 21.

Newby, Charles John, Newport and Ryde, Isle of Wight. Dec. 31.

Payne, Edward Turner, Bath. Dec. 24.

#### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries Act.*

Clarke, Edwin, Longton, for county of Stafford. Jan. 7.

Cooper, William, Tunstall, for county of Stafford. Jan. 14.

Jones, William, Crosby Square, for London, Westminster, Middlesex, Essex, Kent, and Surrey. Jan. 11.

Powell, Jonathan Rogers, Haverfordwest, for Haverfordwest and county of Pembroke. Dec. 24.

#### LEGAL OBITUARY.

1847. Dec. 17.—John Stanley Joy, Solicitor, of Staple Inn, aged 27. Admitted on the Roll, Michaelmas Term, 1842.

Dec. 23.—Robert Henry Bartholomew, Solicitor, of New Inn, Strand, aged 71. Admitted on the Roll, Hilary Term, 1798.

Dec. 26.—Henry Sockett, Barrister-at-Law, one of the senior Benchers of the Hon. Society of Gray's Inn, aged 82. Called to the Bar, Nov. 22, 1797.

Henry Jesse Waddilove, Proctor and Notary, of Doctors' Commons, aged 43.

Dec. 31.—Charles Clarke, Solicitor, of 20, Lincoln's Inn Fields, aged 74. Admitted on the Roll, Michaelmas Term, 1801.

1848. Jan. 6.—Henry Smith Sanderson, Solicitor, of Leeds, one of the revising assessors of that borough. Admitted on the Roll, Trinity Term, 1827.

Jan. 8.—William Pattisson, of Witham, Essex, one of H.M.'s Justices of the Peace for Essex, formerly a solicitor.

Jan. 19.—John Staniforth, Solicitor of Sheffield, aged 54. Admitted on the Roll, Trinity Term, 1817.

Jan. 19.—Humphrey Hinton, Solicitor, of Much Wenlock, Shropshire, Town Clerk of the Borough, aged 76. Admitted on the Roll Michaelmas Term, 1806.

#### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Rolls Court.

*Gardler v. Gardler.* Dec. 15, 1847.

##### PAYMENT OF MONEY INTO COURT.

*The court refused to vary as of course an order "pay a sum of money into court to be paid to A. B." by directing the money to be paid at once to A. B., and refused also to consider, upon that form of application, whether the payment could be enforced by a*

*writ of Fi. Fa. under the 5th order of May 1839.*

THIS was an application to vary an order to costs costs into court for the purpose of enforcing a writ of *fi. fa.* under the 5th order of May 10, 1839, which the officers of the court considered not to apply to an order framed as this was. The order directed the costs to be paid into court, and immediately afterwards paid out

to the plaintiff; the alteration asked was a direction to pay them to the plaintiff.

Mr. Anderson for the motion.

Lord Langdale observed that the order was in a very uncommon form, but he could not vary it as of course.

Mr. Anderson then suggested that the construction put by the officers upon the general order of the 5th of May was incorrect, and that the *fi. fa.* might be properly issued, inasmuch as the money was here directed to be paid to a person.

But Lord Langdale said that was quite a different application from the one made, and he could give no opinion upon it.

*Re George Eyre.* Dec. 1 & 15.

**TAXATION.—AGREEMENT.—SOLICITOR.**

*An agreement that a solicitor shall be paid a certain sum per day above his usual costs, is not such an agreement as makes it necessary to obtain a special order for taxation.*

This was a motion to discharge an order obtained as of course, to tax a solicitor's bill as irregular. The alleged irregularity was, that in obtaining the order no mention had been made of an agreement that the solicitor should be paid for certain services rendered by him at the rate of three guineas a-day above the usual charges.

Mr. Kindersley and Mr. Sheffield for the motion.

Mr. Turner contra. *Re Masters*, 4 Dow. P. C. 18; *Drax v. Scroope*, 2 B. & Ad. 581; *E. P. Wheeler*, 3 Ves. & B. 21; *Re Smith*, 4 Bea. 309; *Alexander v. Anderton*, 6 Bea. 405; *Re Whitcomb*, 8 Bea. 140; *Re Rhodes*, 8 Bea. 224; *Re Thompson*, 8 Bea. 237, and *Re Bracey*, 8 Bea. 331, were referred to.

Lord Langdale, after stating the object of the motion, said that undoubtedly the court would not, upon a common order for taxation, alter an agreement made between the parties as to the terms of payment, and he should have thought that this agreement was of a nature to interfere with the ordinary exercise of the discretion of the Taxing-Master. It appeared, however, that, according to the decision in *Drax v. Scroope*, this was not the case: that the client was allowed upon the taxation to object to the charges, and the solicitor to set them up; and the whole question remained open, notwithstanding an agreement of this nature. But if so, he thought that its existence did not make it irregular to obtain the common order for taxation; the motion must therefore be refused.

Vice-Chancellor of England.

*Smith v. Plummer.* Jan. 17, 1848.

**WILL.—CONSTRUCTION.—POWER OF APPOINTMENT.**

*S., having a general power of appointment amongst his children under his marriage settlement by a deed-poll executed with-*

*out any consideration, releases all his right and title to exercise the power, but subsequently, by his will, appoints certain of the settled money amongst his children: Held, that the release absolutely destroyed the power.*

THE bill was filed in this case by the children of William Smith. It appeared that W. Smith by his marriage settlement, dated Sept. 22, 1807, was jointly with his wife, and in case of his or her death the survivor of them, was empowered to appoint certain property amongst the children of the marriage; and in case such power was not exercised, the property was to be divided amongst the children equally. The wife died without exercising the power jointly with her husband, and after her death, on Feb. 22, 1842, W. Smith, by a deed-poll, after reciting the power of appointment, and that he was desirous of absolutely releasing and extinguishing such power. "It was witnessed, that in pursuance of such desire, he, the said William Smith, did thereby absolutely and for ever release and discharge the hereditaments comprised in the said indenture of settlement, and the proceeds of the sale thereof, and the stocks, funds, and securities representing such proceeds, and all lands purchased with such proceeds, and all and every person and persons who were or might become interested therein respectively, from all power and all right and title to exercise the power of selection or distribution of or amongst the children of the marriage of the said William Smith with his said wife, given or reserved to him in and by the said indenture of settlement. To the intent that such power and all right and title to exercise the same might thenceforth be absolutely released and extinguished and be of no effect, in like manner as if such power had never been given or reserved to him, the said William Smith." On the 22nd of May, 1843, William Smith made and published his will, whereby, after stating that he had the power under his marriage settlement to dispose of by deed, will, or appointment, certain sums of stock, he bequeathed to his son William S. Smith, 4,000*l.*, to his son Joseph S. Smith 10,000*l.*, and to his daughter, Anne Naylor, 101*l.* The question was, whether the deed-poll of February, 1842, absolutely released the power, and consequently whether the bequests in the will under the power were valid or not.

Mr. Stuart, Mr. Malins, and Mr. Steere, for the validity of the exercise of the power by the will, contended that in all the cases where a deed of the present kind was held to be a release of the power there was a consideration expressed in the deed. Here there was a mere naked deed without any consideration, executed indeed by the testator, but never acted on, and being in fact nothing more than a mere declaration that he would not exercise the power. The authority given by the settlement was of an active description. The deed-poll, on the contrary, was a mere passive non-exercise of the power, and therefore did not bar it.

Mr. Rolt, Mr. Lowndes, and Mr. Elderton, *contra*.

The Vice-Chancellor said, he could see no valid objection to declaring that the power was released by the deed-poll of Feb. 1842.

*Leheup v. Tinling.* Dec. 16, 1847.

DISCOVERY OF DOCUMENTS.—PLEA.—  
ANSWER.—EXCEPTIONS.

*A plea to the whole of the discovery sought by a bill, except a portion of the interrogatory asking for the production of documents relating to the matters in the bill mentioned, shelters a defendant from giving a general discovery of documents asked for by the bill, and an answer having been filed together with the plea by way of denial to the portion excepted from the operation of the plea: Held, that such answer was sufficient.*

THE bill was filed in this case by Henry Leheup, for an account against Mr. and Mrs. Tinling, she being administratrix of M. P. Leheup, who died intestate, leaving H. Leheup, his sole next of kin. The bill contained the usual interrogatory, asking the defendants "whether they had not now, or had not lately, and when last in their possession, &c., divers deeds, &c., relating to the matters aforesaid, and whether thereby the truth of the matters aforesaid, or some and which of them would not, if produced, appear, and that they might set forth a list or schedule of all such deeds, &c." The defendant put in a plea and answer to the bill; the plea was in the terms following:—"As to the whole of the said bill, except so much as seeks a discovery from these defendants, as to whom M. P. Leheup, the testator in the said bill named did, at his death, leave his next of kin, if he did not leave the said complainant his sole next of kin, and except so much of the said bill as charges, that these defendants have now or had, and as seeks a discovery, whether these defendants have not now or had not, and when last in their, his, or her possession or power, divers deeds, &c., whereby the truth of the allegation in the said bill contained, that the said testator, M. P. Leheup, left the said complainant, his only child, and sole next of kin, would, if produced, appear, and as requires these defendants to set forth in manner in the said bill mentioned, a list or schedule, &c. These defendants do plead to the said bill, and for plea say, &c." The answer accompanying the plea was in the terms following:—"And these defendants not waiving their said plea but relying thereon, and for better supporting the same for answer to so much of the said bill as they had not before pleaded, to say, that the testator did at his death leave his sister, Mary J. Tinling, the defendant, and another person named M. S. Rogers, who was the only child of a deceased sister, his only next of kin, and the testator at his death left no other next of kin, and these defendants further answering to such part of the said bill as they had not before pleaded

unto say, they denied they had in their possession divers deeds, &c., whereby, if produced, the truth of the allegation that the testator left the said complainant, his only child and sole next of kin, would appear, or whereby, if produced, it would appear that the said testator left the said complainant, his child, or one of his children, or that the testator left the said complainant his sole next of kin, or one of his next of kin." To this answer the plaintiff filed exceptions for insufficiency, on the ground that the defendant had not sufficiently answered the two interrogatories above mentioned. The Master, by his report, found the answer insufficient, exceptions were taken to the Master's report, and now came on to be argued.

Mr. Bethell and Mr. Craig, in support of the exceptions, contended that the defendants had covered, by their plea, all the relief sought by the bill, and all the discovery, except a certain portion to which they had answered, and the only question which the Master had to determine was, whether the defendants had sufficiently answered that portion of the bill excepted out of the plea, viz. so much as sought a discovery as to the possession of documents whereby the truth of the allegations, that the testator left the plaintiff his only child and sole next of kin, would appear. The defendants, by their answer, distinctly denied the possession of any such documents; their answer was sufficient, and the Master was therefore wrong in allowing the exceptions.

Mr. Stuart and Mr. Hetherington, *contra*, contended that they were plainly entitled to have an answer from the defendants to the interrogatory, asking them whether they had any documents at all relating to the matters in the bill mentioned. The answer merely denied that they had any documents that would prove certain allegations in the bill, which was clearly an insufficient answer. The plea could not shelter them from answering the interrogatory. If they condescended to answer at all, they must do so fully. Formerly an objection would have been taken to the plea in point of form, but the new orders now precluded that. The only course left was therefore to object to the answer, and if that should be declared sufficient, there was no remedy whatever.

The Vice-Chancellor said the bill contained two charges: one was, that the defendants had in their possession certain documents relating to the matters in the bill mentioned; the other was, that they had certain documents whereby the truth of the matters aforesaid, or some of them, would appear. A plea had been put in to the whole bill, except that part of it which sought a discovery, whether the defendants had in their possession certain documents, whereby the truth of some specific allegations contained in the bill would appear, and to that portion excepted out of the plea the defendants had answered. The question appeared to him simple enough. Have you *A.* and *B.*? To so much of the bill as seeks a discovery, whether I have *A.*, I plead; and to so much as seeks a discovery of *B.* I answer. That part



of the bill which sought a general discovery of documents was covered by the plea, and that part which sought a discovery of documents whereby the truth of the allegations made by the plaintiff would appear, was answered by way of denial. He thought the answer sufficient, and should allow the exceptions to the Master's report.

Vice-Chancellor Knight Bruce.  
*Rocke v. Cooke.* Dec. 2, 1847.

STATUTE OF LIMITATIONS.

*A debtor by simple contract was declared lunatic in 1823, and two years after the creditor brought an action for his debt. The committees of the lunatic filed a bill to restrain the action, and an order was made by consent of the creditor, that the action should be stayed, and that he should be restrained from further proceeding in it, and from suing the debtor at law in any other proceeding, and the creditor was to be at liberty to prove his debt, if he could, in the matter of the lunacy. In 1828, the Master reported that this, among other debts, required reconsideration, and finally he rejected the claim. The lunacy was never superseded, but in 1841, the debtor charged his estates with payment of his debts, and died in 1843. In 1844, the creditor filed a bill for the administration of his estate, and the court held, that the effect of the Statute of Limitations was not excluded by the proceedings, and dismissed the bill with costs.*

THIS suit was instituted by a creditor against the trustees and executors of the will of Sir Gregory Page Turner, for the administration of his estate. The plaintiff, Mr. Rocke, sued on behalf of himself and all other the unsatisfied simple-contract creditors. The facts were, that before 1823, the late Sir Gregory Page Turner gave to the plaintiff certain promissory notes to the amount of 3,000*l.*, in payment of money lent, and pictures and other works of art sold to him. In January, in that year, the solicitor for Sir G. P. Turner wrote to the plaintiff a letter, saying that his debts would be paid with all possible dispatch. In November following he was arrested and confined in the King's Bench Prison, at the suit of another creditor, and in the following month he was declared a lunatic and to have been of unsound mind from July 1, 1823. In Trinity Term, in the year 1825, the plaintiff lodged a detainer against him, he being still a prisoner, and on the 22nd of June following, the committees of the estate filed a bill to restrain the action, and that the notes might be delivered up to be cancelled. In that suit, an order was made by consent of Mr. Rocke, dated 27th July, 1825, restraining the action and also other proceedings at law against the lunatic; and it was further ordered that all proceedings in the suit should be stayed, and that Mr. Rocke should be at liberty to carry in his claim against the estate of the lunatic in the matter of the lunacy

before the Master to whom that matter stood referred. Mr. Rocke took in his claim, and the Master, by his report dated 9th August, 1828, stated that this, among other claims, required reconsideration, and on a reference back to him he made a further report, not mentioning the claim of the plaintiff, and after the Master's death, a note was found in his handwriting, in which he stated his opinion that the claim ought not to be allowed. The commission of lunacy never was superseded, but Sir Gregory Page Turner made his will on 15th of March, 1841, by which he devised his real estates to the defendants, with directions to pay his debts, except mortgage debts, with interest for one year after they were respectively contracted up to the time of payment; and he appointed the trustees executors of his will. He died on the 6th of March, 1843, and the present bill was filed on the 5th of February following.

Mr. Russell and Mr. Glasse argued that the proceedings in the former suit prevented the operation of the Statute of Limitations, which had been set up by the answer; and further that the order made in the former suit was only partially by the consent of the present plaintiff, and not wholly so as to preclude him from asserting his claim.

Mr. Teed, Mr. Wigram, Mr. Wilcock, Mr. Freeing, and Mr. Webb, for the several defendants, insisted on the Statute of Limitations, and that the plaintiff was conclusively bound by the Order of 1825.

During the argument the following cases were cited and observed on, namely:—*Beard v. Hopkins*, 1 Sch. & Lef. 441; *Ex parte M'Dougall*, 12 Ves. 384; *Bampton v. Birchall*, 5 Beav. 67; *Davenport v. Stafford*, 8 Beav. 503; and *Brown v. Newall*, 2 Myl. & Cr. 558.

His Honour said, that this was a legal, not an equitable demand, and the plaintiff's title, if he had one, to come to the court for the administration of the alleged debtor's estate was grounded on that legal demand, and the same had been made the subject of an action so far back as 1825, the alleged debtor being then a lunatic and so found by virtue of a commission. That action and all other proceedings at law for the demand had been restrained, absolutely barred by an order in a suit instituted by the committees, which order was made with the consent of the present plaintiff. This court had now no jurisdiction to alter that order, and supposing it could, no case was before it to induce it to do so. A state of things might have arisen, in which, notwithstanding this order, the creditor might have sued in some ordinary court of law or equity, but had such a state of things arisen? The plaintiff had actually and actively availed himself of the Order of 1825, and after various reports and reconsideration of the claim, it was finally disallowed on 26th of August, 1829. From that day until after the death of the lunatic, the alleged debtor, which took place in 1843, the creditor was absolutely quiescent, and the Statute of Limitations clearly disposed of the claim, unless the Order of 1825,

and the proceedings under it, precluded its operation, and his Honour was of opinion that they did not. The bill must therefore be dismissed with costs.

[In Bankruptcy.]

*Esparthe Stephenson, in re Stephenson.* Dec. 13 and 20, 1847.

MORTGAGE OF STOCK-IN-TRADE.—DISTRESS FOR RENT.—MARSHALLING.

*Where a trader had mortgaged his stock-in-trade and goods, and retained possession and added to his stock; and then the landlord distrained for rent and sold part of the goods, and then the trader became bankrupt: Held, that the mortgagee was only entitled to the remaining furniture and stock that existed at the time of the mortgage: Held, also that the mortgagee had a right, as against the assignees, to the benefit of the doctrine of marshalling.*

By a deed dated 30th July, 1844, John Stephenson (the bankrupt) assigned to Joseph Stephenson (the petitioner) all his household furniture, stock-in-trade, shop fittings, and other fixtures in and about his house and shop, and all his book-debts relating to his trade, for securing 500*l.*, (part then due and part then advanced,) with interest at five per cent., with power of sale, if the money was not paid on the 1st of October following. The bankrupt carried on his business down to August, 1847, and bought and sold stock accordingly; but a person was put into possession on behalf of the petitioner. On the 3rd of last month the landlord distrained for rent, and the broker was authorized by the petitioner to hold for him as well as for the landlord. On the 16th of August the broker sold part of the furniture and paid the rent and expences, and held the rest of the property as bailiff for the petitioner. On the following day the petitioner removed the remainder of the goods, stock, &c. to a warehouse, and a fiat in bankruptcy being issued after the 14th, the same were, on the 19th of the same month, seized by the messenger under an order of the commissioner acting on the fiat. The petitioner applied to the commissioner for leave to sell the goods, &c., and to prove for the difference; but he would not allow the same, saying he had no jurisdiction so to do. The petition now prayed that the petitioner might be declared a legal mortgagee of the unsold furniture, stock-in-trade, &c., and of the book debts due at the time of the mortgage deed; that an account might be taken of money due and interest on the security; that the goods might be sold, and that the petitioner might have leave to prove for the deficiency, if any.

Mr. Swanston and Mr. Metcalfe for the petition, cited *Aldrich v. Cooke*, 8 Ves. 382; *Jamesson v. Bull*, 3 Ter. Rep. 618; *Tupfield v. Hillman*, 6 Man. and Gran. 245; *Greenwood v. Churchill*, 1 Myl. and K. 546, and *Skippp v. Harwood*, 2 Swan. 586.

Mr. Russell and Mr. Malnis appeared for the assignees, and opposed the petition.

Sir J. L. Knight Bruce, V. C.—I will consider the point of marshalling. It is one of some consequence, and I will communicate with Mr. Vizard, and through him the parties will know my opinion. I do not at present know how the order should be prepared in that respect. In the case of *Tombs v. Roch*, (2 Coll. C.C. 499,) I defined the word marshalling.

Subject to that question there must be a common order, as in the case where there is a written security, subject to what I am about to mention, extending only to such furniture, fixtures, and stock-in-trade, and property purporting to be included in the assignment as now remain, and as were in the house and shop at its date. Then it will be inquired what are existing, if any, and the security will be made available except only on what the landlord may have sold.

The costs will be borne as usual upon a written security, except so far as they have been increased by claiming the book-debts. So far as they have been increased by claiming these debts, the petitioner must pay them. So far as they have been increased by claiming the stock-in-trade not on the premises at the date when the deed was executed, there will be no costs on either side. But as it is suggested that the expense of the apportionment of such costs will far exceed their value, let the order be, as to costs, in the usual manner as in the case of a mortgage or a written instrument.

Dec. 20th.—Sir J. L. Knight Bruce, V. C.—The question upon which, having some doubts, I reserved my opinion in this case, is one of marshalling. Certain personal chattels of the bankrupt were specifically charged by him, for valuable consideration by way of mortgage, in favour of creditors. The bankrupt being permitted to have possession of those goods, and being in possession also of other personal chattels, to which the creditor's security did not extend, the bankrupt's landlord distrained for rent, not upon the former only, but upon both sets of goods. The person in possession under this distress was requested by the mortgagee, and consented, to hold possession of the goods—at least of the mortgaged goods—for him as well as for the landlord, without prejudice to the landlord's rights. All this was before the bankruptcy. A sale took place under the distress. The distress only took place after the bankruptcy, by which that which was the landlord's demand was satisfied. The goods which were the subject of the distress were not all sold, but they included some, if not all, of those which were the subject of the mortgagee's security, whilst some or all of the goods to which the security did not extend remained unsold. The disputed point is, as to the mortgagee's right to claim, as against the assignees, the benefit of the doctrine of marshalling; he asserting, and they denying, that the goods which were not included in his security were first applicable to the payment of the landlord's demand, and,

consequently, that the mortgagee is entitled, as against the assignees, to be placed substantially in the same situation as the landlord, and to regulate his proceedings in conformity with that title. I have considered the point, and my doubt has been removed. The doctrines and the rules recognized by Lord Eldon in *Aldrich v. Cooke* seem to reach this case which is new in species, but not generically. Fraud and reputed ownership were there out of the question. The assignees and the bankrupt are as one, and say that no third person's rights can intervene. The simple case of a person having lent goods to one whose landlord distrains upon those goods, and also upon the proper goods of the tenant, may be thought to exhibit more strikingly the present necessity, in point of reason and justice, for judicial interference, but does not, in substance, differ much from other cases. I must direct the rules of marshalling to be applied as between the mortgagee and the assignees. It is one of those cases in which I cannot dispose of the details here. I can do no more than state the principle. The counsel on both sides must assist the registrar in drawing up the order.

#### Queen's Bench.

(Before the Four Judges.)

*Doe dem. Crawley v. Guttridge.* Hilary Term, 1848.

TRANSFER OF MORTGAGE.—NEW SECURITY.  
—STAMP.

*A. mortgaged land to B. for a term of years. A. died, leaving the property to his wife for life, remainder to his son in fee. In consideration of the payment of the sum advanced by B. and a further advance, the widow and son joined in mortgaging the property to C. for the residue of the term. Held, that C., by this instrument, took a fresh security, and that a deed stamp of 1l. 15s. was necessary, and that the ad valorem duty on the further sum advanced, as required by 3 Geo. 4, c. 117, s. 2, was not sufficient.*

THIS was an action of ejectment by the mortgagee against the mortgagor. Joseph Guttridge mortgaged the premises in dispute to one Brickwood, for a long term of years for the repayment of 160*l.* Guttridge died, bequeathing the premises to his wife for life, with remainder to his son in fee. The widow and son afterwards, in order to pay off the first mortgage and to obtain a further advance, in consideration of 350*l.*, joined in a mortgage of the premises to the lessor of the plaintiff for the residue of the term. The facts above stated were recited in the second mortgage, on which stamp duty to the amount of 5*l.* had been paid, being the *ad valorem* duty on the additional sum advanced, and the progressive duty required by the 55 Geo. 3, c. 184. At the trial the deed was objected to, on the ground that it was insufficiently stamped for want of a deed stamp. The

power of redemption, and the times for payment in the second mortgage, differed from those in the first, but the lessor of the plaintiff did not take any greater estate in the premises than the first mortgagee had done. A verdict was found for the plaintiff, with leave reserved for the defendant to move to enter a nonsuit, if the court should be of opinion that the deed was not properly stamped.

*Byles*, Serjeant, and Mr. *Prendergast* for the plaintiff. By the instrument in question, the remainder of the term originally granted to Brickwood was assigned to the lessor of the plaintiff, in consideration of 350*l.* paid for the purpose of paying off the first mortgage, and by way of further advance. The lessor of the plaintiff does not take any greater estate, nor does he take any better security than was originally granted to the first mortgagee; for in the first mortgage Guttridge covenanted, and in the second the widow and son, who represent him, covenanted. The instrument, therefore, is a transfer of mortgage, by which a sum has been advanced by way of further charge, and comes within the provisions of the 3 Geo. 4, c. 117, s. 2, and if so a sufficient amount of duty has been paid. *Doe d. Burtley v. Gray*,<sup>a</sup> *Doe d. Burnes v. Rowe*,<sup>b</sup> *Doe d. Bowman v. Lewis*,<sup>c</sup> *Doe d. Snell v. Tom*.<sup>d</sup>

Mr. *O'Malley* and Mr. *Peacock*, contra. In *Doe v. Gray*, no opinion was given on the point now before the court, and in *Doe v. Rowe* it did not become necessary for the court to give any opinion on the point now under discussion. The case of *Lamb v. Peace*,<sup>e</sup> *Brown v. Pegg*,<sup>f</sup> and *Humberstone v. Jones*,<sup>g</sup> show that the provisions of 3 Geo. 4, c. 117, are not applicable, where, besides the fresh advance of money, the mortgagee under the second deed takes any additional security; and in the last case the Court of Exchequer held that a covenant to pay the original sum and the additional advance, together with a power of sale which did not exist in the first mortgage, rendered the instrument liable to a deed stamp. [*Patteson, J.* The covenant by the first mortgagor would bind his heirs, and therefore these mortgagors were originally liable.] They were only liable to the extent of assets by descent, but they have now taken upon themselves an additional responsibility.

Lord *Denman, C. J.* It appears to me that this is the same as if a new party was introduced covenanting for himself, his heirs and assigns, and that the stamp therefore is insufficient.

Mr. Justice *Patteson*. I am of the same opinion. It appears to me that the lessor of the plaintiff by this instrument takes an additional security. Parties are now introduced and made personally bound for the whole sum, who were not so by the first mortgage.

Mr. Justice *Coleridge* concurred.

<sup>a</sup> 3 Ad. & El. 89. <sup>b</sup> 4 Bing. N. C. 737.

<sup>c</sup> 13 Mee. & Wels. 241. <sup>d</sup> 4 Q. B. 615.

<sup>e</sup> 8 Ad. & El. 248. <sup>f</sup> 6 Q. B. 1.

<sup>g</sup> 16 Law Jour. Exch. 293.

Mr. Justice Wightman. I think this was not a mere transfer of the mortgage within the provisions of the 3 Geo. 4, c. 117, s. 2, because a new security was given by the introduction of parties who are now made personally responsible, but who were not so before, and a deed stamp therefore is rendered necessary.

Byles, Serjeant, applied to have the rule made absolute for a new trial, on payment of costs.

Rule absolute accordingly.

### Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

Eastham v. Tyler. Trinity Term, 1847.

#### PARTICULARS OF SET-OFF.—EVIDENCE.—ARBITRATION.

*A particular of set-off for 20l. 12s. 6d., for work done to a house and shop, specified certain items, and then concluded, "and sundry work, nails, &c." At the hearing of a reference of the cause before a legal arbitrator, it was proved that the value of the specified work was 9l., but under the words "Sundry work" the arbitrator (subject to the opinion of this court) admitted evidence of work on the premises to the amount of 10l. 1s. Held, that this evidence was rightly received by the arbitrator, and that if the plaintiff was in any way misled by the form of the particular, it was for him either to have applied for further particulars, or, when before the arbitrator, have asked for an adjournment of the reference, if he wished time to answer the evidence as to the claim.*

EARLY in the Term Mr. Chambers obtained a rule calling on the defendant to show cause why a verdict should not be entered for the plaintiff in this cause, pursuant to the certificate of the arbitrator, given herein.

In this case it appeared that a plea of set-off was pleaded by the defendant, who, in pursuance of an order of Mr. Justice Erle, made on the 8th of March, 1847, delivered a certain particular of set-off. Subsequently to this the cause was referred to a legal arbitrator by an order of reference, dated the 28th of April. The arbitrator proceeded with the reference, and examined witnesses on both sides, after which he gave a certificate in the following form:—

"Having heard, examined, and considered the allegations and proofs of both the said parties, humbly states the following question for the opinion of this honourable court. The defendant's particulars of set-off, delivered under an order of Mr. Justice Erle, dated the 8th of March, 1847, are as follows, viz:—

"March, 1846.—To fitting up a shop in Anderson Street with one pair of glass doors and fanlight, lock and bolts and hinges to a partition to ditto, and moulding all complete, and

fitting up shop window with glass case and linings, and sundry work, nails, &c., &c. . . . . 20 12 6

"The amount due to the defendant for the work so particularized, that is to say, 'for fitting up a shop in Anderson Street with one pair of glass doors and fanlight, lock and bolts and hinges to a partition to ditto, and mouldings all complete, and fitting up shop window with glass case and linings,' is 9l.

"The amount of other work done about the premises and included under the term 'sundry work,' is 10l. 1s., making together 19l. 1s.

"The plaintiff objected to any evidence being given under these particulars of set-off of more than the work specified, constituting the 9l., and I received the evidence of the residue, subject to that objection. If the court shall be of opinion that the evidence of set-off under the words 'sundry work,' to the amount of 10l. 1s., ought not to have been received, then I certify that a verdict for the plaintiff should be entered for 8l. 15s. debt, and 1s. damages; but if the court should be of opinion that such evidence was properly received, then I certify that a verdict should be entered for the defendant; and I further certify that in either case the costs of the reference and certificate are to be paid by the said parties in equal proportions. As witness my hand this 3rd day of May, 1847.

————— Arbitrator."

The present rule having been obtained,

Miller now (June 11) showed cause, and contended, that the particulars were quite large enough to justify the arbitrator in admitting the evidence as to the 10l. 1s. If the plaintiff had thought the particulars too general, he might have applied for further and better particulars, or asked the arbitrator for an adjournment if he was in any way taken by surprise by the evidence when given; it was clear, however, that he could not have been in any way deceived, for the work was proved to have been done, and therefore the plaintiff must have been well aware of what was intended to be proved under the particular. It is always enough if a particular be intelligible to a reasonable extent and not calculated to mislead. *Lines v. Rees*, 1 Jurist, 593. Under all the circumstances, therefore, this rule must be discharged, and a verdict entered for the defendant.

M. Chambers, (*Lush* with him,) was heard in support of the rule. He contended, that the particular delivered by the defendant in this case was one clearly calculated to mislead. The object of the strictness required in particulars, is laid down in Archbold's Practice, vol. 2, p. 1216. "The object, however, of this strictness is, that the opposite party may know what will be attempted to be proved against him at the trial, and prepare his evidence accordingly." Now, in this case the particulars given is clearly calculated to mislead, for the larger part of the defendant's claim of 20l. 12s. 6d. is attempted to be recovered under the words "sundry work, nails, &c. &c.," the larger part of the claim being thus put in as an accessory merely to

the enumerated specific things; the larger claim being comprehended in the generality: this was clearly calculated to mislead the plaintiff, and therefore the arbitrator ought not to have admitted the evidence. The rule must therefore, it is submitted, be made absolute, and a verdict entered for the plaintiff.

*Wightman, J.* If I were satisfied that injustice would be done by the defendant's succeeding in this case, I should pause before I discharged the present rule, but I am of opinion that there is no hardship at all done to the plaintiff by the evidence being admitted by the arbitrator under the particular as it stands. If the plaintiff was not quite satisfied with it, he should have taken out a summons for further and better particulars. He knew that something more was intended than the 9*l*. He must have known that he owed the defendant as much money as the defendant owed him, yet he goes on with the action and lies by, thinking he could take advantage of what he thought was a defect in the particular. If he had been misled in any way, he might have asked for an adjournment, which the arbitrator would have granted as a matter of course. As it is, I think the evidence was rightly admitted, and that the verdict ought to be entered for the defendant. The present rule will therefore be discharged.

Rule discharged.

### Common Pleas.

*Varney v. Hickman.* Sittings after Michaelmas Term, Dec. 8th, 1847.

GAMES AND WAGERS ACT, 8 & 9 VICT. CAP. 109.—CONSTRUCTION OF 18TH SECTION.—RIGHT TO RECOVER BACK STAKE DEPOSITED.

*Where a sum of money was deposited in the hands of a stakeholder to abide the event of an illegal wager; but before the determination of such wager, one of the parties gave a notice of his abandonment of the wager, and requiring the stakeholder to repay his deposit: Held, that an action for money had and received to the use of the party giving the notice, lay to recover from the stakeholder the amount of such deposit, notwithstanding the provision of the 8 & 9 Vict. cap. 109, sec. 18: Held also, that if the statute had been a good answer in bar it must have been specially pleaded.*

**DEBT** for money had and received. *Plea nunquam indebitatus.* At the trial before Wilde, C. J., at the sittings in London after Michaelmas Term, 1846, it was proved that a bet of 20*l*. aside had been made on a trotting match to come off on the Uxbridge-road, between the plaintiff's horse and that of one Isaacs. The plaintiff had deposited his 20*l*. with the defendant as a stakeholder, but before the time appointed for deciding the match he determined not to let his horse trot, and gave the defendant notice, requiring him to return the amount of his deposit. This the defendant failed to do, alleging that Isaacs' horse had, at

the time appointed, walked over the course, and that he had, thereupon, paid over the amount of the deposit to Isaacs. The jury, under the direction of the learned judge, at the trial, found a verdict for the plaintiff for the sum of 20*l*., and a rule nisi having been obtained to set aside that verdict and for a new trial on the ground of misdirection.

*Talfourd, Serjt., and Phinn* now showed cause. The first point raised here by the defendant, is that under the provision of the 8 & 9 Vict. cap. 109 sec. 18, the plaintiff cannot recover in the present action. That section enacts, "that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void, and that no suit shall be brought or maintained in any court of law or equity, for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager, shall have been made." Looking at the preamble of the act, and the whole of the section together, it is submitted that the intention of the act is to prevent the recovery of a sum deposited to abide the event of a wager, by a winner, either from his adversary or the person who acts as stakeholder, and not to prevent a party from recovering, after he had, as here, abandoned the illegal purpose for which the money had been deposited. To give a contrary construction to the act would have the effect of destroying the *locus penitentie* of the parties making the wager, which could never have been intended. The latter provisions of the section might be unnecessary, but they must be construed with reference to the first part of the section, of which they are nothing more than an extension in terms. The court, even if any doubt existed, would not carry the interpretation further than what appeared to be the intention of the legislature. *Dwarris on Statutes*, 584; *Salkeld v. Johnson*, 1 Hare, 207; *Green v. Wood*, 7 Q. B. 178; *Crespigny v. Wittennoon*, 4 T. R. 790; *Bac. Abr. tit. Statutes*. But assuming that the section in question was a bar to the right of action, it can only be made available as a defence when specially pleaded, and cannot be given in evidence under the plea (as here) of the general issue. The cases of a plea of the statute of limitations, and the non-delivery of an attorney's signed bill, under the 6 & 7 Vict. cap. 93, where a special plea is required, are not distinguishable from the present. The cases of *Martin v. Smith*, 4 Bing. N. C. 436, and *Potts v. Sparrow*, 1 Bing. N. C. 594, were referred to on this point.

*Serjeant Byles, Parry, and Joyce*, in support of the rule. Before the statute in question, even a deposit upon a legal wager, where notice had been given before the amount was paid over, could be recovered back. *Eltham v. Kingsman*, 1 Barn. & Ald. 683; *Egerton v. Furzman*, 1 Ry. & M. 214. And as to the case of an illegal wager, the right to recover was quite clear. Then the statute in question was passed, and for the very purpose,

it was submitted, of taking away any such right of action. The words are express, not only that "no suit shall be brought or maintained in any court of law or equity for recovering any sum of money, &c., alleged to be won upon any wager, but also any sum "which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." This last enactment is conclusive on the point. Then, if that be, the true construction of the act, it is just as if it had said that no promise shall be implied from any such deposit, and therefore no special plea was necessary in order to render the section available as a defence in bar. It resembles the case of an action by an apothecary, where there is no proof of his certificate, and non assumpsit the only plea on the record. *Shearwood v. Hay*, 5 Ad. & G. 383. The inability to recover back the deposit from a stakeholder was intended by the legislature as a kind of penalty on the party to the illegal wager.

*Maule, J.*\* This is an action of debt for money had and received, brought by the plaintiff against the defendant, on the ground that the defendant had received 20% of the plaintiff's money, which he held to his, the plaintiff's, use, the plaintiff having, before the day on which the race was to be run, given notice to the defendant that he would not run the race, and thereby desired that he would return his (the plaintiff's) deposit. The first point raised is, that the 8 & 9 Vict. cap. 169, sec. 18, prevents the bringing of an action like the present; and secondly, supposing that to be so, then, in order to avail himself of that section, the defendant ought to have pleaded it specially. I am of opinion that the plaintiff is entitled to sustain the verdict notwithstanding the objection involved in the first point. But that if that objection had been a good one, the defendant could not render it available as a defence without its being specially pleaded. With respect to the first point, the question is whether, as a wager is rendered void by the first clause in the 1st section of the act, a stakeholder can be made liable at the suit of one party who has repudiated the wagering contract. Now the 1st section provides that all contracts or agreements, by way of gaming or wagering, shall be null and void; nor did it stop there, but further enacts that "no suit shall be maintained for recovering any sum of money alleged to be won upon any wager," and also, that "no suit shall be maintained for recovering any sum which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made." Now the second provision was certainly comprehended in, and would have been the legal consequence of, the first. But as there was nothing unusual in an act of parliament stating in terms, that which would otherwise have been inferred, I do not think that fact ought to have any great weight in construing

the act in question. Then, with respect to the third clause, it was said that provision would be idle, inasmuch as it would be no more than the legal consequence of the first, unless there was given to it the further effect of depriving a party of his right to recover a deposit under a repudiated wagering contract. This construction, it was true, would give an operation to the clause beyond that which was merely the consequence of, and incidental to, the previous parts of the section. But I think, if the second portion of the section be looked at, it is more conformable that the third part should be considered no more than an exposition of the legal consequence of the first. The second clause related to a case where a winner brings an action seeking to recover against a loser; and although the third clause might have been omitted, yet, if the second were inserted, then the third became necessary. I think, therefore, on looking closely at the section, and treating it as a matter of grammatical construction, that it does not apply to a case of a repudiated contract such as this. This construction, however, can, I think, be supported on higher ground. It seems to me that the present action cannot be considered as an action brought to recover a sum of money or valuable thing which had been deposited in the hands of any person to abide the event of any wager. Such an action would be one in which the plaintiff would claim the money because it had been deposited in the defendant's hands to abide the event of a wager, and here it is quite the contrary, the money being claimed because it was money which belonged to the plaintiff, and which the defendant held for him, and was under no obligation to pay it to anybody else. After the notice of repudiation it ceased to be money in the defendant's hands to abide the event of a wager, and became money in his hands which he has no good reason for retaining. Upon these grounds I think the case ought to be determined in the plaintiff's favour. It was said that the scope of the act was to prevent gaming, and that, therefore, the construction contended for by the defendant, as it would have the effect of discouraging gaming, ought to be upheld. But I do not think that it is at all reasonable to suppose that the act was intended to impose so penal a forfeiture as that. Supposing, however, that the true construction were, that this section did deprive the party here of the right to recover back his stake, then I think it is necessary that, as a defence, it should be specially pleaded, although in the present case it is unnecessary to give any decision on that point.

*Cresswell, J., and Williams, J., concurred.*

Rule discharged.

### Exchequer.

*Graham v. Ingoldby*. Jan. 11, 1848.

PRACTICE.—SIGNING JUDGMENT.—AFFIDAVIT, WAIVER OF.

If in the jurat of an affidavit accompanying a

\* *Wilde, C. J.*, was sitting *à nisi prius*, and *Coltman, J.*, had left the court.

plea in abatement sworn before a commissioner, the words "sworn before me" be omitted, and the plaintiff take further proceedings, he thereby waives his right to judgment as for want of a plea.

In this case a rule had been obtained calling upon the defendant to show cause why an order of Mr. Baron Platt should not be rescinded, and why the interlocutory judgment thereby ordered to be set aside, with costs, should not be restored.

An action had been brought against the defendant in this court, to which he pleaded *inter alia* that he was an attorney of the Queen's Bench, and not of the Exchequer, and therefore not liable to be sued in the said Court of Exchequer, &c., concluding to the country, and adding the similiter. An affidavit accompanied the plea the jurat of which was informal, being "sworn at Manchester," &c., omitting the words "before me." The plaintiff then struck out the similiter and took other steps in the cause: there was subsequently a demurrer and a five-days' rule for the defendant to join in demurrer. Before the expiration of the five days, plaintiff signed judgment as for want of a plea, upon the ground that the jurat of the affidavit accompanying the plea in abatement was defective.

*Martin*, for the defendant, contended that the omission was a mere irregularity, and did not render the plea a nullity; that the affidavit, though not made according to the rule of court, was notwithstanding good as an affidavit; and that a deponent might be indicted upon it for perjury. The words "before me" were unnecessary in an affidavit sworn before a judge at chambers, and there could be no real distinction between an affidavit so sworn and one sworn before a commissioner. [*Parke*, B. When sworn *at chambers* the judge is supposed to be present, but the commissioner is not supposed to be present *at Manchester*.] The plaintiff, by having received the plea and taken subsequent proceedings in the cause, had waived all right to object to the plea on the ground of any irregularity in the affidavit. He cited 13 G. 2, c. 18, s. 5; 4 Anne, c. 16, s. 11; *Emfrey v. King*, 2 D. & L. 375; *Horsfall v. Matthewman*, 3 M. & S. 154; *Mellor v. Walker*, 2 Saund. c. 2; *Garratt v. Hooper*, 1 Dow. P. C. 28. [*Parke*, B., referred to *R. v. Bloxam*, 1 Ad. & E. 386.]

The Attorney-General, for the plaintiff. The case of *Horsfall v. Matthewman*, 3 M. & S. 154; was one of a mere regulation of the court; this depends upon a statutory enactment which must be complied with. *Davidson v. Chilman*, 1 N. C. 297; *Bill v. Bament*, 8 M. & W. 317; *Goodwin v. Parry*, 4 T. R. 577; *R. v. Smith*, 4 T. R. 414; *Roberts v. Spurr*, 3 Dow. P. C. 551; *Taylor v. Phillips*, 3 East, 155.

*Per Curiam*. This rule must be discharged. As the affidavit is required by the Statute of

Anne for the protection of the plaintiff against a dilatory plea, the plaintiff may waive or insist upon it as he pleases. We must treat this as a case in which there has been no affidavit, because the affidavit is decidedly bad. This case is not like that of a service on a Sunday, as the statute relating to that subject is for the benefit of the public at large, and cannot be waived, whereas this is for the benefit of a private individual. Here the protection of the statute being for the benefit of the plaintiff, and he having by subsequent proceedings, as he well might, waived the objection to the plea for want of an affidavit, he could not afterwards treat it as not subsisting, and sign judgment as for want of a plea.

Rule discharged with costs.

*Hills v. Silcock*. Jan. 12, 1848.

PRACTICE.—WAIVER OF OBJECTION TO JUDGMENT AND EXECUTION.

*Where a plaintiff in an action holds a collateral security for the payment of the money sought to be recovered, and a judgment in such action is irregularly signed, execution issued, and the money levied; a subsequent demand by the defendant and acceptance of such collateral security is a waiver of the irregularity in the judgment.*

In this case the plaintiff had before action brought received from the defendant wine warrants as a collateral security for the payment of the debt recovered. Judgment had been irregularly signed, execution issued, and judgment satisfied. After execution the defendant applied to the plaintiff to have the warrants returned, and threatened proceedings if they were not, and thereupon received them. Having subsequently obtained a rule calling on the plaintiff to show cause why an order of Mr. Baron Platt should not be rescinded, and why the judgment and execution in pursuance of the said order should not be set aside, and why the money had in execution should not be returned to the defendant's attorney,

*Montague Chambers*, on behalf of plaintiff, contended that any irregularity in the proceedings had been waived by the defendant's demanding the wine warrants from the plaintiff as a right, and receiving them accordingly. *De Wolf v. Bevan*, 13 M. & W. 160; *Smith v. Clinch*, 8 Dow. P. C. 337.

*Peacock*, contrà. This could not be treated as a waiver by the defendant, as he had always protested against the order, and had a good defence to the action.

*Per Curiam*. This was in effect an undertaking not to take advantage of any irregularity in the execution. It was saying to the plaintiff, you have got your irregular judgment and obtained the money under it, and you are not now entitled to the warrants, therefore give me them up. This rule must be discharged. The case of *De Wolf v. Bevan* is decisive that this is a waiver.

Rule discharged.

\* See *Hackin v. Hussels*, 1 Dow. & L. 1006; and *Charlesworth v. Ellis*, 7 Q. B. 678.—Reporter.



## Court of Bankruptcy.

*In re Grylls and others.* Jan. 24, 1848.

## INSPECTION OF BANKRUPT'S BOOKS.—PRACTICE.

*The court will not permit the solicitor for a creditor, who, has not proved his debt, to inspect the bankrupt's books, unless it be clearly for the benefit of the estate.*

THE choice of assignees having been stayed in consequence of a petition to Vice-Chancellor Knight Bruce, to direct the fiat to be proceeded with in the district court of Bristol, Mr. Commissioner Shepherd, to whom the fiat was balloted in this court, refused to admit a creditor to prove his debt, and subsequently refused to allow the solicitor of such creditor to inspect the bankrupt's books, upon the ground, that the order of the Vice-Chancellor operated as a stay of all proceedings.

Mr. Linklater, on the part of the creditor, now stated, that an application was afterwards made to the Vice-Chancellor, who directed that the commissioner should exercise his own discretion as to allowing an inspection of the bankrupt's books, without considering the order made by him, the Vice-Chancellor, as in

any manner affecting the exercise of such discretion. He therefore repeated the application already made, to be allowed to inspect the bankrupt's books in the hands of the official assignee, as the creditors for whom he appeared were anxious to know the state of the bankrupt's affairs.

Mr. Williams, as solicitor for the fiat, opposed the application. Mr. Linklater's client had not proved, and the real object in looking over the books of the bankrupt was, to obtain materials for a canvass to vote for certain assignees. It was not usual, he submitted, to allow a creditor who had not proved to inspect the bankrupt's books; and there was no ground shown for making this case an exception to the general rule.

Mr. Commissioner Shepherd said, the general rule undoubtedly was, that a creditor who had not proved could not be allowed to look into the bankrupt's books. He did not say that rule might not be subject to exceptions, but in this case it was tolerably clear the object was a struggle for the assigneeship, and the court could not interfere to promote such an object, by departing from the ordinary rule. The application must therefore be refused.

## BUSINESS OF THE COURTS.

## COMMON LAW SITTINGS.

## Exchequer of Pleas.

*After Hilary Term, 1848.*

## IN MIDDLESEX.

|           |        |                            |
|-----------|--------|----------------------------|
| Tuesday   | Feb. 1 | Common Juries.             |
| Wednesday | 2      | Customs and Common Juries. |
| Thursday  | 3      |                            |
| Friday    | 4      |                            |
| Saturday  | 5      | Excise and Common Juries.  |
| Monday    | 7      |                            |
| Tuesday   | 8      | Common Juries.             |
| Wednesday | 9      | Special Juries.            |
| Thursday  | 10     |                            |
| Friday    | 11     |                            |
| Saturday  | 12     |                            |

## IN LONDON.

|           |         |                                 |
|-----------|---------|---------------------------------|
| Monday    | Feb. 14 | Adjournment Day, Common Juries. |
| Tuesday   | 15      |                                 |
| Wednesday | 16      | Common Juries.                  |
| Thursday  | 17      |                                 |
| Friday    | 18      |                                 |
| Saturday  | 19      |                                 |
| Monday    | 21      |                                 |
| Tuesday   | 22      | Special Juries.                 |
| Wednesday | 23      |                                 |
| Thursday  | 24      |                                 |
| Friday    | 25      |                                 |
| Saturday  | 26      |                                 |
| Monday    | 28      |                                 |

The Court will Sit at 10 o'clock.

## Queen's Bench.

## HILARY TERM.

*Jan. 20, 1848.*

THIS Court will, on Tuesday, the 1st day of February next, and the three following days, and on Tuesday, the 8th day of February, and the four following days, hold Sittings, and will proceed in disposing of the business in the Special Paper, Crown Paper, and New Trial Paper, and will also hold a Sitting on Saturday, the 26th day of February, and give judgment in cases previously argued.

By the Court.

## Exchequer of Pleas.

*Monday, Jan. 24, 1848.*

THIS Court will on Saturday, the 5th day of February next, and on Monday the 7th day of February next, and the five next following days, hold Sittings and will proceed in disposing of the business then pending in the paper of New Trials, Demurrer Paper, and Special Causes Paper, and in giving judgment in any cases standing for judgment.

By the Court.



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, FEBRUARY 5, 1848.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

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## THE JUDGMENT OF THE QUEEN'S BENCH IN DR. HAMPDEN'S CASE.

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THE Term has concluded, and the case which excited the greatest interest on the part of the public undoubtedly is that upon which the Court of Queen's Bench has been appealed to, in reference to the confirmation of Dr. Hampden, the Bishop elect of Hereford. In pursuance of an habitual determination to avoid entering upon the discussion of topics of a purely controversial or political character, we have heretofore refrained from any allusion to the circumstances connected with the appointment of Dr. Hampden to the see of Hereford, or to the extraordinary proceedings which have followed that appointment. The application to the Court of Queen's Bench, in reference to those proceedings, however, has invested the subject with a degree of professional interest, and given it a permanent importance, which not only justifies, but demands, some notice of the case in a work professing to furnish a record of legal decisions. The arguments of counsel on both sides occupied the court for four days, and are allowed on all hands to have been most able and elaborate,—evidencing great learning and research,—and there is little doubt that these arguments, and the judgments founded upon them, will be referred to long after the personal matter which has given rise to them is forgotten.

Under this impression, we proceed to state the question submitted to the Court of Queen's Bench, the facts upon which it was founded, and the manner in which it has

been disposed of, as concisely as the subject will admit. The application to the Court of Queen's Bench was for a rule calling upon the Archbishop of Canterbury and his Vicar-General to show cause, why a mandamus should not issue directed to them, commanding them, or one of them, at a court to be therefor duly holden in the cause, or business, or matter of the confirmation of the election of the Rev. Renn Dickson Hampden, Doctor of Divinity, to the Bishopric of Hereford, to permit and admit to appear in due form of law, the Rev. Richard Webster Huntley, Clerk, Master of Arts of the University of Oxford, Vicar of Alderbury, in the county of Salop, and Diocese of Hereford, the Rev. John Jebb, Clerk, and others, to oppose the said confirmation of the election of Dr. Hampden, and to hear and determine upon such opposition, and upon the articles, matters, and proofs thereof.

The affidavits, upon which the rule had been obtained, set forth, the vacancy in the bishopric, the *congé d'élire* to the Dean and Chapter, the letter missive of the Crown, declaring the piety, &c., of Dr. Hampden, and the election returned under the chapter seal; that her Majesty had issued her letters patent confirming the election, and commanded the archbishop to confirm and consecrate the bishop elect; that the archbishop then directed the vicar-general to do what was commanded; and that a court was assembled to confirm the sentence. The objectors, it was stated, appeared not for the purpose of impeaching the process of the election, but of showing that they were prepared to enter into an opposition

to the confirmation of the bishop, founded on two books written by him, which were alleged to contain doctrines in manifest denegation to certain things set forth in the book of Common Prayer.

The Attorney and Solicitor-General, as representing the defendants, appeared, assisted by two learned civilians and other counsel, to show cause against the rule, and the points on which they chiefly relied in opposition were fourfold :—1st, That by the statute 25 Henry 8th, the proceedings on the confirmation of a bishop were mere matters of form, and that the duties of the archbishop, or his vicar-general, were of a ministerial, and not a judicial nature. The second point was, that, assuming the archbishop was not a mere ministerial officer, the remedy against him was by appeal, and not by mandamus. The third point was, that if the parties complained of did not constitute a court, properly speaking, but might be considered as assembled for a *quasi* judicial inquiry, that that court possessed no means of investigating the subject-matter of this peculiar charge. The fourth objection was, that a mandamus in this case would not lie.

It was strongly insisted on the part of the archbishop, however, that the statute of Hen. 8th disposed of the whole question, and that the law and practice under it were as follow :—

“The dean and chapter certified the vacancy to the Crown, the Crown sent a *congé d'élire*, accompanied with a letter missive to the dean and chapter; they could only elect the person named in that letter, and if they did not elect within twelve days, the Crown named by letters patent. In the latter case the person so named then went to the archbishop for investiture and consecration, but if he was elected by the dean and chapter then the archbishop received a direction to confirm him, and if that was not done accordingly, certain heavy penalties immediately followed.”

The archbishop was directed by the statute to proceed with all “speed and celerity.” It was true his vicar-general cited all persons who opposed the election to appear, and there were proclamations made for the opposers to appear, but that, and indeed the whole ceremony of confirmation, was mere form, and not substance; but there were cases analogous to this proclamation,—for instance, the challenge of the champion at the coronation. If any one accepted that challenge, would this court grant a mandamus to compel the performance of it? If the court of the archbishop was a court of competent jurisdiction, this

court would not grant a mandamus to it. These parties could not come to the court for a mandamus on a mere question of doctrine, and not of temporal right; but, at all events, even if the archbishop had done wrong, he could not retrace his steps. He had nothing further to do in the matter. The Bishop of Hereford was already confirmed, and neither the archbishop nor the court could deprive him of his prelacy.

In support of the rule it was submitted, that the election of the bishop was an inchoate act, and that, unless it were consummated by confirmation, it would not be good. Suppose that in the interval between the election and confirmation, the person elected as bishop became insane, or openly became reconciled to the Church of Rome, could it be said that his election would be good to all intents and purposes? Confirmation was as much a judicial act as consecration was a spiritual act; and although the archbishop was required to consecrate with all speed and celerity, it by no means followed that the archbishop was not to inquire into the fitness of the person to be consecrated, nor that his doing so would be any interference with the Queen's prerogative.

It was admitted, that there was no precedent of an archbishop having refused to confirm, but several cases were cited in which it was alleged that such a step had been contemplated. In reply to the argument, that even if confirmation were a judicial act, the proper remedy was by appeal, it was answered, that as the appearance of the opposers at Bow Church was not recorded, and their articles were rejected without being received or entertained, no appeal could lie. The opposers had not been heard, because the ecclesiastical judge misconstrued the act of parliament, and there would be no remedy, unless a mandamus were allowed to go. It was also strongly pressed upon the court, by Sir Fitzroy Kelly, that unless it was felt that every point was free from doubt, the safest course was not to determine the question upon a motion for a mandamus, but to allow the writ to go, and upon the return to the writ, the matter may be placed in such a train for inquiry as to allow of the case being carried, if it should be thought necessary, before the highest judicial tribunal in the kingdom.

The court took time to consider its judgment, which was pronounced on Tuesday last.

The judgment, as there was reason to apprehend from the constitution of the court, was not unanimous. As usual, when the

judges differ, the junior judge delivered his opinion in the first instance. Mr. Justice *Erle's* judgment turned chiefly upon the construction to be put upon the statute 25 Hen. 8, and can scarcely fail to be considered as a very able commentary upon its provisions. The learned judge came to the conclusion that the object of the statute was, to give the Crown the sole power of appointment, and that the business of the dean and chapter, and of the archbishop, was merely ministerial. The act meant that nomination should take place as before the passing of the act, and the parliament of the day, no doubt, intended that the word "confirm" should be taken in its usual sense. If the confirmation had been more than a mere matter of form, there was no doubt that it would have been exercised, but no one instance had been put forward in which the right here contended for had been used and admitted in any country or at any time. He thought, therefore, that the rule for a mandamus should be discharged. Mr. Justice *Coleridge* on the other hand, was of opinion that the applicants were entitled to the mandamus for which they applied, and delivered a very learned and elaborate judgment in support of this view. The Court of Queen's Bench (he said) exercised jurisdiction over all inferior courts, and the fact that parties who had a right to appear in one of the inferior courts were refused a hearing was a sufficient reason to his mind to grant a mandamus. The applicants had made out a case so clear and strong, as to raise a belief in his mind that the conclusion to which they came was right, and that they were entitled to the writ for which they asked. By the practice of this court in issuing mandamus, absolute certainty was not required as the ground for such issue; the question was generally more properly decided afterwards upon the record in a higher court. The province of the court appeared to him to be more that of a grand than a petty jury; they were simply to inquire whether enough was proved to allow the case to go any further. Upon these grounds, though he admitted not without considerable doubt and difficulty, he thought the rule for a mandamus should be made absolute. Mr. Justice *Patteson* agreed with Mr. Justice *Coleridge* in the conclusion he had come to, apparently with less hesitation and difficulty. He was clearly of opinion that the confirmation of a bishop by the archbishop was a judicial and not a ministerial act, and that such being the case, the opposition to the confirmation of the bishop ought to have been heard. He

was, therefore, of opinion that the rule for the mandamus ought to be granted. Lord *Denman* concurred with Mr. Justice *Erle*, and differed from the view taken by Justices *Patteson* and *Coleridge*. His judgment contained many splendid bursts of eloquence. He was decidedly of opinion that the rule *nisi* that had been obtained for a mandamus ought to be discharged, considering that if the court adopted any other course, they would be giving encouragement to those theological animosities which he lamented to see existing in the Church, and producing incalculable public mischief and inconvenience.

The practical result of this judgment, which it took the learned judges nearly four hours to deliver, is, that the court being equally divided, the application for a mandamus falls to the ground. The matter stands as if the question had not been brought before the court. So much of partizan feeling and controversial zeal has been imported into the discussion, that, in one sense perhaps, it may be considered matter of congratulation that neither party has obtained a triumph. We confess, however, we should desire to see those who preside in our courts of justice above all party considerations, and lament that any occasion should arise in which predilections of this nature can be suspected to have influenced their decisions and created a diversity of opinion amongst the judges. In concluding this hasty notice of what is generally known as the Hampden controversy, we shall only observe, that the appointment in the first instance was unfortunate,—the proceedings by which it was followed—questionable, and the legal result altogether unsatisfactory.

## CONSTITUTION OF THE ECCLESIASTICAL COURTS AT DOCTORS' COMMONS.

HAVING copied at considerable length the observations introduced by Dr. Addams in the case of *Geils v. Geils*, reflecting upon the constitution of the Arches Court, and the relation in which the learned judge stood to some of the parties and witnesses, as well as to the leading counsel and proctor for the promotant, Mr. Geils, a sense of fairness and justice obliges us to publish the reply which Sir Herbert Jenner Fust, the learned judge, has thought fit to make in reference to those observations, and to

the course of proceeding adopted by the leading counsel for the respondent, Mrs. Geils.

After the arguments had concluded, the learned judge stated that, as to the general merits of the cause, he reserved his judgment for further consideration, and he is then stated, according to the Times report, to have proceeded as follows :

" But some circumstances have arisen in the course of the discussion of this case, in respect to which the court thinks it necessary, at the present time, to make one or two observations ; some of them more of a general character than exclusively applicable to the circumstances of this case. I allude most particularly, in the first instance, to the charge brought against the court of general corruption ; for the court has been charged with undue partiality, not in this case only, but in other cases where one particular learned counsel has been engaged on one side, and another learned counsel on the other ; that the court has suffered itself (according to the charge brought against it) to be swayed by undue motives—that of prejudice against one side, and of favour towards the other. It is enough for the court to meet with a general denial a charge of this description ; but it is quite impossible that any person whatever, acting fairly and impartially, can listen patiently to such an imputation upon the judicial office, resting upon assertion on one side, and met by denial on the other. But I must say, that I repel with indignation such a charge against me. The conduct of the court is before the profession and the public, and it is for them to judge whether the court is liable to such an imputation or not. Such a charge of corruption and partiality cannot be received on the allegation of a counsel who, under all circumstances and in all cases that I have before me, in which he is concerned, seems to make the cause his own, and to identify himself with his party, and, according to his own opinion of the case, holds his client's character to be unimpeached and unimpeachable, and that of the opposite party the reverse. An allegation of this kind, so made, never can be received as proof of such an imputation against me. I know of no other test by which my judgments can be tried than with reference to the appeals made from this court to the superior court, and by ascertaining what proportion of them has been affirmed or reversed ; that is the only test of the soundness of the motives of my decision, and by that test I have not the least objection to be tried. The grounds of the decisions of this court are all before the public, and the public may therefore determine for themselves by reading the reported cases, whether the grounds of the decisions are satisfactory or not. But if persons will come to a determination after hearing one side only, and, assuming that what is brought forward on one side is true, come to a conclusion as to the conduct of the court, they must be left to the enjoyment of that opinion ; but that is not the

way in which the court or any person ought to be judged. Let them hear both sides, and see if the grounds of the decision are satisfactory or not. The court thought it right in this case, on the last occasion when it was argued, to make some observations upon the manner in which the case had been conducted, with reference to the language which had been used, and to its effect upon the character of the court, the character of the bar, and the character of the profession at large. I must say, that when I hear such epithets applied to witnesses in a cause, as calumniators, liars, slanderers, satyrs, I think, blackguards, rascals, and venomous fiends, surely I am justified in saying that such language is not calculated to support the character of the court or the character of the profession with the world at large ; and the learned advocate, after the use of these epithets had been objected to on the other side, refused to modify them, but justified their application. He repeated them, and wished them to be recorded, and expressed his regret that the English language did not furnish more opprobrious terms, for if it did, he said he would discard those he had used and employ them. I ask, whether it is for the character of the bar, and for the honour of the bar, that observations like these should pass unnoticed ? and if it ought to be endured that such epithets are to be used in this court as if they were so common as neither to create surprise nor provoke reproof ? I expressed my opinion as to the use of those epithets, and I see no reason to alter my opinion. With respect to another part of the case, the learned advocate thought fit to read with a peculiar gesture and tone of voice, a part of the evidence of one of the witnesses in the cause, and repeated the words with the same gesture and tone ; and it did create a sensation in the mind of the court. The learned counsel was at liberty to read that part of the evidence if he thought fit to do so ; but only those who were present, and heard and saw the manner in which that part of the evidence was read and repeated, could judge of the effect which his tone and gesture produced. Again, when I was told, at the conclusion of his reply, that if in any one respect the sentence of this court was adverse to Mrs. Geils, the case would be immediately appealed to the Privy Council, and if the Privy Council affirmed the sentence of this court, there would be an appeal to another tribunal—that of public opinion, which would neither affirm the sentence nor remit the cause,—what was this but an attempt to deter the court from forming its own judgment on the case ? In this particular case before the court there was an appeal, in an earlier stage of it, from the admission of Mr. Geils' allegation, which was admitted with reluctance by the court, and not without some deliberation and considerable reformation. That appeal was carried up to the Privy Council, and by the Privy Council the sentence of this court was affirmed, and the cause was remitted to this court. Is it to be said that this court was biassed in its judgment and decided wrong,

when its sentence was affirmed by the superior court, and, as I understand, (it was so stated in the argument, and not contradicted,) without hearing the counsel for the respondent? It does appear to me that the observation of the learned advocate was a threat held out to the court which ought not to have been made, and which the court was bound to reply to and take notice of."

The learned judge then proceeded to a very important point of professional practice. He said,

"What I allude to is this:—In the course of the discussion two interrogatories were read (the 67th and 68th); and with reference to the particular facts which are the subject of those interrogatories, I was told that in this case all the pleadings and answers and interrogatories were drawn by the learned advocate himself without any communication with the proctor acting for Mrs. Geils; and it appears from the evidence that some of the witnesses (two of the most important witnesses) had been seen and communicated with by the learned advocate. It appears to me, and I do not hesitate to express this opinion, that this course is altogether unprofessional. The proctor is interposed between the party and the counsel. He is to instruct the counsel, to collect the facts of the case which are proper to be brought before him, and to ascertain from the witnesses the facts to which they can depose. It is his duty to put the proceedings in a proper form, in the shape of an allegation, to lay them before counsel for his supervision, to see whether the facts are pleaded in a proper form, and the counsel is at liberty to revise the pleadings, to call for additional facts if necessary, and suggest alterations and omissions, and, if it be proper, he may draw the whole over again, but not without communication with the proctor, who is the *dominus litis*; he is responsible to the court for the due conduct of the proceedings especially belonging to him. It is his business to furnish the counsel with proper instructions. But I am informed that the course pursued in this case has been taken in many other instances. Indeed, I am told that it is the invariable practice of the learned counsel, and that he is determined to persevere in it. In my judgment this course is not only unprofessional, but quite contrary to what ought to be the course of proceeding in this court. The proctor is the *dominus litis*; he is responsible for the conduct of the cause; he is to have a voice, therefore, and an opportunity to offer his opinion as to any point in which he may happen to differ from the learned advocate, and he is at full liberty and entitled to offer an opinion (with due deference) on any point respecting which a difference may arise. He is not to be made a mere puppet or machine, to appear in the cause without any opportunity of stating his view of the case if he should differ from the learned counsel. It is his act, the bringing in of the allegation; he is the party proponent; he is the person to

deliver the interrogatories to be put to the adverse witnesses; and to do other acts which can be done only by the proctor. I want to know how the proctor is to discharge his duty if he is to be excluded from every means of informing himself as to the truth of the facts, and as to matters necessary for the cross-examination of the adverse witnesses. Consider what would be the situation of the proctor with reference to his client. Is he to be held out to his client as unworthy of his confidence or not capable of advising him? He must appear in the eyes of his client as unworthy of confidence, or incapable of conducting his cause to a successful issue. But, unfortunately, the court is not in a condition to lay down any rule on this point; the court can lay down no rule, as it knows nothing of any case until its attention is called to it, and then it can only express its opinion whether the practice be professional or unprofessional. But the remedy is in the hands of the proctor himself; he is capable of applying a remedy, and he ought to do so; and if he submits to be made a puppet or machine, he must take the consequences of it. All the court can do is to express its opinion. I say that this mode of proceeding is quite irregular and improper, and tends to pervert the interests of justice, to obstruct the due conduct of causes, and is fraught with prejudice, not only to the character of the proctor himself, but to the interests of parties and of the public. All these observations apply with peculiar force to the practice of counsel seeing the witnesses, which is an entirely irregular course of proceeding in this court and in all others. I apprehend it would never be permitted in the courts of law or equity, and it is highly improper to be permitted in this court."

The subject of the judge's supposed extensive patronage was next adverted to.

"It has been held out that the court has the patronage of all the appointments, posts, and offices in this profession, and that the court bestows it upon its near connexions and relations; and this supposed abuse of patronage has been urged as an argument for the reform or abolition of this court. It would be well if, before such statements are made, parties would inform themselves as to the true state of the facts. I have belonged to this profession nearly forty-five years—on the 3rd of July next it will be forty-five years since I was admitted to the bar of this court. Between that time and the present I have held many offices, now held (more worthily) by other persons, and during that whole period, including the thirteen years during which I have occupied this chair, the only piece of patronage which fell to the court was the Apparitorship of the Arches' Court, which about five years ago became vacant, and I bestowed it upon a person who had been my clerk when I was King's Advocate, and who

was, by his ability and zealous performance of his duty, most worthy of it. I hold the offices of Dean of the Arches and of the peculiar, and official principal and judge of the Prerogative Court; and the only piece of patronage belonging to me is, as Dean of the Arches, the appointment of the seal keeper, and with the appointment of seal-keeper not any one of my connexion has anything to do; it is in the hands of a gentleman of high character in the profession, who held it before I took this office, and who holds it now. And as to these two offices, their emoluments do not amount in the whole to anything like 50*l.* a-year. So that I have no patronage, and therefore have had no opportunity of abusing it. As to the other appointments, I have no more to do with them than any gentleman of the bar or of the profession. I am not even consulted as to the appointments before they are made; the only thing I do is to sign the appointments. The principal registrar appoints the deputy registrars; the deputy-registrars appoint the clerks of seats; and the clerks of seats appoint their own deputies: and as to any single office in the profession (except the two I have mentioned,) I have not any more to do with them than any gentleman at the bar. I never interfere, directly or indirectly, with any appointment. With respect to one office given to a near connexion of mine, that of Queen's Proctor, the only step I took in regard to that is, that, on being consulted as to four or five individuals amongst the most respectable members of the profession, who on the death of the late Queen's Proctor were candidates for the office, and from whom a selection was to be made, all I did, on being applied to by one of the members of the Government to say which of the four or five was most suited for the office, I gave no opinion; I said all were gentlemen of high character in the profession, and each would be found fully qualified to discharge the duties of the office with benefit to the Government and credit to himself. That was the only part I took in that appointment. I have thought it right to make this statement, to show how mistaken is the notion that I have patronage to distribute, and that I bestow it unfairly upon my own connexions. I have no patronage, and am never consulted as to any appointment.

The length of this extract precludes our offering any commentary upon it at present, but we shall take an early opportunity of recurring to the subject.

#### JUDGE'S ORDER CHARGING ANNUITY OUT OF SUITORS' FUND.

A CASE was argued in the Court of Exchequer, at the close of Michaelmas Term last,\* in which no point of law can be

said to have been determined, but which involves a question of considerable importance which is still left in some degree of uncertainty. It arose upon the following state of facts:—

The late Master Lynch, being afflicted with permanent infirmity, disabling him from the due execution of his office as a Master in Chancery, resigned that office by deed, on the 25th of March, 1817; and the Lord Chancellor, by an order dated on the 31st of the same month, and reciting the statutes 46 G. 3, c. 128, and the 3 & 4 W. 4, c. 84, directed the Bank of England to pay Mr. Lynch the proportion of his salary as Master accruing from the last quarterly day of payment to the day of his resignation, and an annuity of 1,500*l.*, by quarterly payments during his life, out of the Suitors' Fund. It seems that the Bank of England is in the habit of paying salaries and pensions to a large amount out of the Suitors' Fund, but there was no appropriation of any part of the fund for payment of Master Lynch's annuity. A quarter's pension was due to Master Lynch, under this order, on the 5th July, and on the 6th of that month, Baron Platt, at the instance of a judgment creditor, named Witham, in an action of *Witham v. Lynch*, made an order that the annuity of 1,500*l.*, payable to the defendant as a superannuated Master, out of the Suitors' Fund, should stand charged with the payment to the plaintiff of the sum of 4,007*l.* 17*s.*, the amount of the judgment debt in the action. The order was served soon after it was obtained, and subsequently (on the 12th July) the bank paid the defendant's attorney the quarter's salary out of the Suitors' Fund. The plaintiff afterwards brought an action on the case against the Bank, to recover damages in respect of this payment. The matter was brought before the Court of Exchequer upon a rule, obtained on behalf of the Bank, calling on the plaintiff to show cause why Baron Platt's order should not be rescinded, principally on the ground that the Suitors' Fund, out of which the annuity to the defendant was payable, was not stock standing in the defendant's name, or in the name of any one in trust for him, but was in fact the property of the suitors of the Court of Chancery, so that if it could happen that the suitors, who were the rightful owners, should claim the whole money standing in their name, there would be no means of paying the annuity. On the other hand, it was contended, that the defendant had a clear vested estate in pos-

\* *Witham v. Lynch*, 17 Law Jour., p. 13, Exch.

session in the annual produce of the funds standing in the name of the Accountant-General, and popularly known as the Suitors' Fund, and that it was lawful for the learned judge, by his order, to charge that fund to the extent of Mr. Lynch's pension, under the provisions of the statute 1 & 2 Vict. c. 110, which were extended by the 3 & 4 Vict. c. 82, s. 1, to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares, as in the dividends, interest, or annual produce thereof. It was insisted, in fact, that the sum standing in the name of the Accountant-General was to be considered, to the extent of the defendant's pension, as if it had been standing in the name of a trustee of the defendant.

The Court thought the question raised by the argument much too doubtful to justify them in setting aside Baron Platt's order, as by so doing the question would be concluded. They therefore let the order stand, giving the parties an opportunity to test its validity in any other manner. The matter was too doubtful to act affirmatively either way, and the rule to rescind the order was therefore discharged.

#### THE LEGAL YEAR-BOOK FOR 1848.

By the Editor of the Legal Observer.

#### THE STATUTES, STANDING ORDERS IN PARLIAMENT, NEW RULES OF COURT, &c.

THIS work was published with a Diary for the present year in one volume, but part of the edition has been separated into two volumes. The first volume comprises all the *Statutes* of the last Session of Parliament, effecting alterations in the Law, with explanatory Notes;—the *Standing Orders* of the House of Commons relating to Private Bills, corrected to the close of the Session;—the *New Rules* of all the Courts, from November, 1846, to November, 1847;—the *Regulations* of the Inns of Court;—the *Examination Rules*, with Practical Directions;—the *Registration* of Attorneys, *Renewal* of Certificates, *Times* of Proceeding in the several Courts, *Plan* of Solicitors' Accounts, &c.

It contains, also, the most important parts of the Stamp Laws and Taxes, the Distribution of Intestates' Estates, Annual Summary of Legal Business, various useful Tables; the List of Judges, Commissioners, Recorders, Town Clerks, Magis-

trates' Clerks; the various Law Societies, Professional Lists, &c.

The Statutes are arranged in the order of their general importance, and classed according to their respective subjects, viz.:—

- I. *Law of Parliament*.—1. House of Commons Costs Taxation.
- II. *The Courts*.—1. Bankruptcy and Insolvency. 2. Chancery Affidavit Office. 3. Chancery Mastership.
- III. *Poor Law*.—1. Administration of the Poor Laws. 2. Poor Removal. 3. Poor Removal (Scotland). 4. Rating Stock in Trade.
- IV. *Law of Property*.—1. Tithes. 2. Drainage of Land. 3. Commons Inclosure. 4. Commons Inclosure Amendment Act. 5. Copyhold Commission. 6. Highway Rates. 7. Turnpikes. 8. Trust Funds. 9. Copy-right.
- V. *Ecclesiastical*.—Jurisdiction.
- VI. *Criminal Law*.—1. Juvenile Offenders. 2. Custody of Offenders. 3. Threatening Letters.
- VII. *General*.—1. Marriages. 2. Passengers. 3. Carriers. 4. Police of Towns. 5. Joint-Stock Companies.
- VIII. Lists of Public, Local, Personal, and Private Acts, with a General Index to the Statutes.

#### IX. STANDING ORDERS relating to PRIVATE BILLS.

1. Appointment of Committees, &c.
2. Proceedings before Examiners and Committees.
3. Practice of the House.

This is designed as an annual volume of ready reference for the practitioner.

#### MEMOIR OF THE LATE WM. PATTISSON, ESQ.

MR. PATTISSON was the second and surviving son of Jacob Pattisson, Esq., of Witham, by his first wife Sarah, the only child of Mr. Buller, and granddaughter of William Badeley, Esq. of Suffolk. He was born at Witham, his father's native town, on the 30th August, 1775. In early life he had the advantage of the tuition of that celebrated English writer, Mrs. Barbauld, formerly Letitia Aikin; and his scholastic education was finished under Dr. Phillips, of Palgrave, Suffolk. Mr. Pattisson possessed in after life considerable literary taste, and various articles of his even in early life appeared in a publication intitled "The Cabinet," and other periodicals.

He was articled to Messrs. Brown and Taylor, of Diss, in Norfolk, and completed his course of legal instruction in London. He practised for about thirty years in his native town, and retired from the profession in 1831.

In 1800, Mr. P. married Miss Hannah



Thornthwaite, the second daughter of Mr. Thornthwaite, of Islington. He lost his wife, by whom he had two sons, in 1828.

Mr. W. H. Pattisson, jun., the elder son, a barrister on the home circuit, was, with his bride, drowned in the *Lac de Gauve*, in the Pyrenees, within a month of their marriage, in September, 1832. Mr. Pattisson can be scarcely said to have ever recovered from the shock occasioned by this event, though soothed by a general sympathy, which, on the occasion of the funeral of his son and his wife, who were buried together in the family vault at Witham, was manifested in the most remarkable and impressive manner. It is singular that his father had sustained a somewhat similar loss in the death of his eldest son, (at the university of Edinburgh in 1782)—a young man of considerable talent and great promise.

Early in the present reign, the subject of our present brief biographical sketch was qualified as a magistrate of this county, and till bodily infirmities prevented him, was very useful and active in that capacity in his own town and immediate neighbourhood.

Mr. Pattisson was always prompt in exerting himself for the improvement of his native town. He erected and improved various houses, embellished the vicinity of the town with ornamental and tasteful plantings, widened lanes, improved roads, and formed a handsome one from the centre of the town, which he dedicated to the public, and which is now called Guithavon-street. He also gave the

churchyard and the site of the new church, All Saints, which was consecrated in 1842, besides largely aiding in the erection of that edifice and the schools adjoining.

In fact, for the last century and upwards, it appears that Mr. Pattisson and his family have greatly assisted in the improvement of Witham. Mr. Pattisson was one of the founders of the Witham savings' bank, and other public undertakings, calculated to benefit the town and its neighbourhood. He was also one of the earliest members and officers of the Witham Bible Society, and for many years filled the office of its president, and promoted almost all the religious, literary, and benevolent societies in his own town, besides many in the county from early years.

His health for some years gradually declined, but he was only confined to his house during one week previously to his decease, which took place on the 8th January, 1848. He has left one son and eight grandchildren.

Mr. Pattisson died possessed of considerable wealth, a large portion of which he derived from his father, and the remainder was acquired by himself in the practice of his profession, which for many years was very extensive. He was much respected by his professional brethren, and is succeeded by his son in his highly respectable practice. Mr. Pattisson was one of the earliest members of the Incorporated Law Society, of which, though he had retired from his professional duties, he continued a member till the time of his decease.

## CIRCUITS OF THE JUDGES.

(*Mr. Baron Parke will remain in Town.*)

| SPRING<br>CIRCUITS. | HOMR.                                   | MIDLAND.                   | NORFOLK.                           | NORTHERN.                 | OXFORD.                            | WESTERN.                       | NORTH<br>WALES. | SOUTH<br>WALES.   |
|---------------------|---|----------------------------|------------------------------------|---------------------------|------------------------------------|--------------------------------|-----------------|-------------------|
| 1848.               |   |                            |                                    |                           |                                    |                                |                 |                   |
| Commission<br>Days. | Lord Den-<br>man.<br>J. Cole-<br>ridge. | L.C.J. Wilde.<br>J. Maule. | L. C. B.<br>Pollock.<br>J. Coltman | B. Alderson.<br>B. Rolfe. | J. Patteson.<br>J. Cress-<br>well. | J. Wight-<br>man.<br>B. Platt. | J. Erie.        | V. Wil-<br>liams. |
| Saturday . Feb. 19  |   |                            |                                    | Launcester                |                                    |                                |                 |                   |
| Wednesday . 23      |   |                            |                                    | Appleby                   |                                    |                                |                 |                   |
| Friday . 25         |   |                            |                                    | Carlisle                  |                                    |                                |                 |                   |
| Saturday . 26       |   |                            |                                    |                           | Reading                            | Winchester.                    |                 | Swansen           |
| Tuesday . 29        | Hertford                                | Northamp-                  |                                    | Newcastle &               |                                    |                                |                 |                   |
| Wednesday Mar. 1    |   | [ton                       |                                    | [Tn. Oxford               |                                    |                                |                 |                   |
| Saturday . 4        |   | Lincoln &                  |                                    | Durham                    |                                    | Salisbury                      |                 |                   |
| Monday . 6          | Chelmsfd.                               | [City                      | Aylesbury                          | Worcester                 |                                    |                                |                 | Haverford-        |
| Thursday . 9        | Nottingham                              | [Tn.                       | York & City                        | [& City                   |                                    |                                | Welchpool       | west & Tn         |
| Friday . 10         |   |                            |                                    |                           |                                    |                                |                 | Cardigan          |
| Saturday . 11       |   |                            | Bedford                            |                           | Stafford                           | Dorchester                     |                 |                   |
| Monday . 13         | Maidstone                               |                            |                                    |                           |                                    |                                | Bala            |                   |
| Tuesday . 14        |   | Derby                      |                                    |                           |                                    |                                |                 |                   |
| Wednesday . 15      |   |                            | Huntingdon                         |                           |                                    |                                | Carmarvon       | Carmar-           |
| Thursday . 16       |   |                            |                                    |                           |                                    | Exeter & Co.                   |                 | [then             |
| Friday . 17         |   |                            | Cambridge                          |                           |                                    |                                |                 |                   |
| Saturday . 18       |   | Leicest. & B.              |                                    |                           | Shrewsbury                         |                                | Beaumaris       |                   |
| Monday . 20         | Lewes                                   |                            |                                    |                           |                                    |                                |                 |                   |
| Tuesday . 21        |   |                            |                                    |                           |                                    |                                |                 | Brecon            |
| Wednesday . 22      |   |                            |                                    |                           |                                    |                                | Ruthin          |                   |
| Thursday . 23       |   | Oakham                     | Bury St.                           | Liverpool                 | Hereford                           |                                |                 |                   |
| Friday . 24         |   | Coveutry                   | [Edmonds                           |                           |                                    |                                |                 |                   |
| Saturday . 25       |   | Warwick                    |                                    |                           | Monmouth                           | Bodmin                         | Mold            | Prestolgn         |
| Monday . 27         | Kingston                                |                            |                                    |                           |                                    |                                |                 |                   |
| Tuesday . 28        |   |                            | Norwich &                          |                           |                                    |                                |                 |                   |
| Wednesday . 29      |   |                            | [City                              |                           | Glo'ster & C.                      |                                | Chester         | Choster           |
| Saturday April 1    |   |                            |                                    |                           |                                    | Taunton                        |                 |                   |



## LECTURES AND EXAMINATIONS AT THE INNS OF COURT.

GRAY'S INN.

January 27th, 1848.

THE Lecturer on the Law of Real Property and Conveyancing gives notice (with the sanction of the Treasurer and Benchers of this society) that there will be a voluntary Examination for Honours in the English Laws of Real Property, in the Hall of Gray's Inn, in Trinity Term, namely, on Wednesday, the 7th day of June next. All students for the Bar will be qualified to stand on this occasion who attend and join in the ordinary Lecture Examinations, Mootings, and other Exercises which take place in Gray's Inn Hall, between the months of January and June; and the position of the Candidates will depend upon the results of the Examination on the 7th June, in connexion with those of the ordinary Exercises before-mentioned. The names of the successful Candidates alone will appear in the Class-List, so that those who do not think proper to go in for Honours, or who do not succeed, will not be prejudiced.

### RESULT OF THE HILARY TERM EXAMINATION.

THE Examination on the 24th January was conducted by Mr. Methold, one of the Masters of the Court of Common Pleas, Mr. R. R. Bayley, Mr. Coverdale, Mr. Thomas Clarke, and Mr. Keith Barnes. The number of candidates who attended was 111. Of these 101 were passed and 10 postponed. The questions, which we were enabled to publish in our last number, will be found to afford a fair trial of the knowledge of the candidates in the several departments of law and practice.

The candidates are aware that they must answer satisfactorily in Common Law and Equity, and in one other department, that is, either in Conveyancing, Bankruptcy, or Criminal Law and Proceedings before Magistrates. We understand that it has lately been under the consideration of the examiners, whether *Conveyancing* should not at all events be satisfactorily answered,—involving as it does a very essential and important part of a solicitor's duty. Due notice will no doubt be given before this proposed change be carried into effect; and we think it will be in every respect desir-

able, that the future candidates should prepare well for this branch of the examination—which, whether soon rendered essential to their passing or not,—must assuredly be important to their professional interests and welfare.

### NOTES OF THE WEEK.

#### PRIVILEGE OF ATTORNEYS IN COUNTY COURTS.

Two questions are before the Superior Courts: one whether a *plaintiff* attorney can recover a debt under 20*l.* and costs in the Superior Court? the other, whether a *defendant* attorney is entitled to his writ of privilege if sued in the County Court? These questions are expected to be decided at the present sittings *in banc*.

#### CONDUCT OF PROSECUTIONS BY THE GOVERNMENT.

The Secretary of State for the Home Department has directed a circular to the Metropolitan Police Magistrates, stating that public inconvenience has recently occurred in some instances, from the want of instructions to counsel to prosecute persons charged with serious offences; and suggesting that in future in all serious cases, of committals, when the injured party is not bound over, or is unable to prosecute, copies of the depositions should be transmitted forthwith to the Secretary of State, in order that they may be considered and directions given for prosecutions. The plan thus proposed appears to afford a very inadequate remedy for an admitted evil, and will necessarily throw great additional patronage into the hands of government.

#### EXCHEQUER PRACTICE COURT.

Mr. Baron *Rolfe* sat on the 29th and 31st January, to hear motions in the Exchequer Chamber, after the example of the Queen's Bench Practice Court. This proceeding has been adopted with the view of diminishing the great pressure which usually exists in the full court on the three last days of term.

#### PROHIBITION AGAINST A COUNTY COURT.—SPLITTING DEMANDS.

A shop-keeper at Worcester brought 228 claims against a railway contractor, for goods supplied to his workmen. All these demands might have been included in one action in a superior court. A rule *nisi* for a prohibition was issued by the Court of Exchequer. On showing cause the following intimation of the opinion of the court was given on the 29th January, but the judgment was deferred:

Mr. Baron *Alderson*.—The actions all depend on the one original undertaking of the defendant, as sworn to by the plaintiff himself, who made out a case in the plaint which was heard,

on which the judge ought to have nonsuited him.

Mr. Baron Parke.—The only question is, whether this was a "cause of action" in the county court. If it was, no doubt the plaintiff could not split it.

Sir F. Pollock.—We will consider the question, which is one of very great and general importance. I own, for my part, I cannot make out how one man can have 228 causes of

action against another in the self-same day, and in the self-same words too; but we will consider the matter.

Mr. Baron Parke.—The case certainly involves a serious question. The proceeding of the plaintiff is clearly an abuse of the act; and the only point is, whether we are to correct that abuse by prohibition, or leave it to the discretion of the presiding judge.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Vice-Chancellor of England.

*The Bishop of Hereford v. Griffin.* 11 Jan. 25, 1848.

#### COPYRIGHT.—INJUNCTION.

*The copyright of an article written for the Encyclopædia Metropolitana, and paid for without more; belongs to the author of the article, and an injunction granted to restrain the proprietors of the Encyclopædia from proceeding to publish the article in a separate form.*

THIS was a motion to dissolve an injunction, which was granted to restrain the defendants from printing and selling copies of an article on the Life of Thomas Aquinas, as a separate work or otherwise than as a part of the work entitled "The Encyclopædia Metropolitana." The plaintiff, Dr. Hampden, in the year 1835, at the request of Messrs. Baldwin and Cradock, who were then the proprietors of the Encyclopædia, wrote the article in question. The defendants, who were now the proprietors, a short time since intimated to the bishop that they intended to publish the article in a separate form, at the price of 3s. 6d.; this he objected to, but the defendants persisting, the injunction now sought to be dissolved was obtained.

Mr. Rolt and Mr. Calvert, for the motion, contended that when the plaintiff entered into the contract to write the article for the Encyclopædia, he parted with all his copyright in it, and the defendants were therefore justified in publishing it in any form they might think fit; that, according to the custom of the trade, the copyright of the articles supplied was always understood to belong to the proprietors for all purposes, unless there was some express stipulation to the contrary, which there was not here. The 18th section of 5 & 6 Vict. c. 45, was as follows:—"Be it enacted that when any publisher or other person shall, before or at the time of the passing of this act, have projected, conducted, and carried on, or should hereafter project, conduct, and carry on, or be the proprietor of any *encyclopædia*, review, magazine, periodical work, or works published in a series of books or parts, or any book whatsoever, and shall have employed, or shall employ, any per-

sons to compose the same or any volumes, parts, *essays*, *articles*, or portions thereof for publication in or as part of the same, and such work, volumes, parts, *essays*, *articles*, or portions shall have been, or shall hereafter be, comprised under such employment on the terms that the copyright therein shall belong to such proprietor, projector, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such *encyclopædia*, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, *essay*, *article*, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this act, *excepting* that in the case of *essays*, *articles*, or portions, forming part of, and first published in *reviews*, *magazines*, or other *periodical works* of a like nature, after the term of 28 years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this act. *Provided* always, that during the term of 28 years the said proprietor, projector, publisher, or conductor shall not publish any such *essay*, *article*, or portion, separately or singly, *without the consent previously obtained of the author thereof*, or his assigns. *Provided also*, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid, to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved, or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition, when published in a separate form according to this act, without prejudice to the right of such proprietor, projector, publisher, or conductor, as aforesaid." Under the first portion of this section, the copyright in the *essay* was expressly given to the proprietor of the *encyclopædia*, and the proviso at the end of the section did not take it away, as the proviso applied

only to the excepted portion of the section in which the word encyclopædia was purposely omitted.

Mr. Serjeant *Talfourd*, Mr. *Bethell*, and Mr. *Fleming*, for the bishop, contended, that the stat. 5 & 6 Vict. c. 45, did not alter the rights of publisher and author, *inter se*, but its main object was to give publishers a remedy against those who pirated their works. Looking at the question as it would stand before the stat. of Victoria, the copyright could only pass from the bishop by a writing duly attested by two witnesses: this was enacted by the stat. of 8 Ann. c. 19, s. 2, and had always been acted on. *Power v. Walker*, 4 Camp. 8. There was no such assignment from the bishop, nor did he, when he sent in his manuscript, mean to part with the copyright—he merely gave the proprietors of the Encyclopædia a license to use the article in that particular form and way: if there had been any such intention or contract to pass the copyright, the method prescribed by the statute of Anne would have been followed; at common law, therefore, the copyright was never parted with by the bishop. The interpretation put upon sec. 18 of 5 & 6 Vict. c. 45, was not correct; the proviso at the end manifestly applying to the whole of the preceding section, and that being so, the section was founded on the fact, that the writer when he contributed an article to the proprietor, did so on the terms that the copyright therein should belong to the proprietor, and the bishop never did part with his copyright, nor enter into any terms for doing so. The affidavit of the bishop positively stated, that he never contemplated his article appearing in a separate form; this had not been met by the answer. It was said that Dr. Hampden's name was not registered pursuant to the act, and that therefore he could have no reserved right to the copyright, but the act was "as to the copyright of books and the assignment thereof;" here there was neither a book nor an assignment—the whole work of the Encyclopædia Metropolitana was registered, and under that the defendants were seeking to publish one article without any legal title to do so. Registration had nothing to do with the case, for the moment an infirmity appeared behind the registration, its effect was done away with.

The Vice-Chancellor said, he should not direct an issue to be tried at law, because it was perfectly plain that the copyright was in the Bishop of Hereford, unless he had in any way parted with it; but by his affidavit he most distinctly said that he wrote the article for the encyclopædia, and for that alone, and that he gave no additional right beyond the right to publish it in the encyclopædia. The defendants, in their answer, had alleged their facts in a particularly novel manner; probably it was done to be simply accurate; but they did not state what the contract was, further than could be elicited from three paragraphs. "They believed it to be true that plaintiff acceded to write the article, and that it was written in 1834, when it was paid for at seven guineas a

sheet; the payment so made was made at the usual rate; and that all such articles were, as these defendants believe, uniformly composed on the terms that the copyright should belong exclusively to the publisher, except when there were special reservations." That did not meet the plaintiff's case; for instead of saying they believed the contract was that Dr. Hampden should write the article and be paid for it on the terms that the copyright should belong to the proprietor, they used that circuitous language, and purposely abstained from stating that which alone would have any weight, and so managed the statement of their case that it was impossible to try an issue. He should continue the injunction; and as the defendants had made the show of a case, but not stated the substance, he should give the plaintiff his costs.

#### Vice-Chancellor Knight Bruce.

*Ex parte Thoroton, in the matter of the Midland Railway Company.* Jan. 12, 1848.

#### CONSTRUCTION OF RAILWAY ACT.

*The purchase money of an estate taken by a railway company (the estate tail in which was subsequently barred) was ordered to be paid out of court to the person formerly tenant in tail, but no costs were given as against the company.*

THIS was the petition of Mr. Thoroton, the tenant in tail of lands which had been taken by the Midland Railway Company for the purposes of their act; and after stating that the estate tail in the purchase-money paid into court had been duly barred, prayed that the money might be paid to the petitioner as the absolute owner, and that the company might be ordered to pay the costs, charges, and expenses of the petitioner of and incidental to the petition and the order thereon.

*Renshaw* for the petition.

*Speed*, for the railway company, objected to the payment of the costs, as by the 49th section of the company's act, (6 W. 4, c. 78,) the company were only required to pay the costs where the money was to be again invested in stock or land.

The Vice-Chancellor said, that reason, justice, and propriety were in favour of the company having to pay such costs as these, and he would have given them against the company if he could. He had, however, already decided on similar words to those of this section, that he could not give such costs. (*Ex parte Molyneux*, 2 Coll. 273.) If the court might properly throw out any intimation, he thought that the petitioner should re-invest the money in land, the whole costs of which proceeding must be paid by the company. However, as the petitioner sought to have the money, the court was compelled to refuse the costs.

*Ex parte Norton, Re Robinson.* Dec. 14, 1847.

10 & 11 VICT. C. 102.

*Orders made by the Court of Review previous to its abolition, are not by the above statute prevented from being executed.*

Swanston and Amphlett moved that Mr. Vizard might be ordered to deliver out his certificate of the taxation of costs in this case. The order for the taxation had been made previous to the abolition of the Court of Review, and after the passing of the 10 & 11 Vict. c. 102, the taxation was proceeded with by Mr. Vizard, under protest by one of the parties interested. The same party having objected to the delivery of the certificate of taxation, this motion was rendered necessary, and it was further asked that the costs of the application might be borne by the objecting party.

Russell and Bagshawe opposed the motion on the ground of the act not having provided for the continuation of the execution of the orders of the Court of Review.

The Vice-Chancellor said, that he thought the certificate ought to be delivered; but he could not give any costs, as it had been thought right by the learned officer to withhold the certificate.

[In Bankruptcy.]

*Ex parte Wightman and Collier. In re Wightman and Collier.* Jan. 12, 1848.

PETITIONING CREDITORS' DEBT.—ANNUL-  
LING FIAT.—PETITIONING CREDITOR RE-  
SIDENT OUT OF THE JURISDICTION.

*Where the petitioning creditors' debt is not proved, and they reside out of the jurisdiction, and the solicitor to the fiat declines to appear for them in an action, the fiat will be annulled, with costs.*

THIS was a petition presented by the bankrupts, against whom a fiat issued on the 20th of December, 1847, and prayed that the fiat might be annulled, with costs to be paid by the petitioning creditors. The petition stated, that the petitioning creditors were resident at Dundee, in Scotland—that the bankrupts were perfectly solvent—that there was no debt due to the petitioning creditors—that there was no act of bankruptcy, and that the fiat had been issued from vindictive feeling on the part of the petitioning creditors. On the same day on which this petition was heard, Mr. Commissioner Evans, to whom the fiat was directed, decided, that the act of bankruptcy was sufficient, but that the petitioning creditors' debt was not proved.

Swanston appeared for the petitioner.

J. V. Price for the respondents, asked for time, and cited, *Ex parte Magnus*, 2 M. D. & De G. 604, in support of his application.

The Vice-Chancellor asked, whether the solicitors for the petitioning creditors would undertake to appear for them in any action by the bankrupt, relative to the issuing the fiat.

The solicitor having declined to give such an undertaking,

The Vice-Chancellor said, that the petitioning creditors when issuing the fiat were resident out of the jurisdiction; they had ever since been so, and were still so. Their solicitor declined to undertake to appear for them in any action to be brought by the bankrupts, nor would he give the name of any solicitor who would give such undertaking. In that state of things he should order that the fiat be at once annulled with costs.

Queen's Bench.

(Before the Four Judges.)

*The Queen v. Seale and others.* Hilary Term, 1848.

MANDAMUS.—PAROCHIAL ASSESSMENT ACT.  
—SERVICE OF NOTICE OF OBJECTION.

*In order to entitle a person to be heard before justices at special sessions, under the Parochial Assessment Act, 6 & 7 W. 4, c. 96, s. 6, against a rate made for the relief of the poor, it is only necessary to prove service of notice of objection on one of the parish officers who made the rate.*

IN this term a rule nisi had been obtained, calling upon Sir H. P. Seale and others, justices of the peace for the county of Devon, to show cause why a mandamus should not issue, commanding them at special sessions to hear objections to a rate made for the relief of the poor, under the Parochial Assessment Act, 6 & 7 W. 4, c. 96. Section 6, of that act provides, that justices at special sessions shall hear and determine all objections to any such rate, on the ground of irregularity, unfairness, or incorrectness in the valuation of any hereditaments included therein; provided always, that no such objection shall be inquired into by the said justices in special sessions, unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseer, or other person by whom such rate was made. When the rate in question was brought before the justices at a special session, held on the 8th of December last, it was proved that notice of objection was served on three of the parish officers, but that with respect to two of them the notices were not served within the time specified by the act, and the justices being of opinion that service upon one was not sufficient, refused to hear the objection to the rate. It appeared on affidavit that in this parish there were two churchwardens and two overseers who made the rate, but that there was not any collector.

Mr. Greenwood showed cause, and contended that the words of section 6 were doubtful as to how many of the persons concerned in making the rate should be served with notice, and that the Parochial Assessment Act must be construed with reference to the 41 Geo. 3, c. 32,

s. 6, (which was previously to the existing act as to all appeals against rates, except those at special sessions,) where notice is required to be given to the churchwardens or overseers of the poor, or any two or more of them. The justices, therefore, were justified in refusing to hear the objections to the rate, inasmuch as notice was only proved to be served on one of the overseers.

Mr. Pashley, in support of the rule, was not heard.

Lord Denman, C.J. In cases of removal it is only necessary to serve the order of removal on one of the parish officers, and I think that, upon a fair construction of this statute, the notice of objection was properly served.

Patteson, Coleridge, and Wightman, J.'s, concurred.

Rule absolute.

### Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

Jones v. King. Hilary Term, Jan. 31, 1848.

APPEARANCE SEC. STAT.—NOTICE OF APPOINTING ATTORNEY.

*The defendant not appearing to a writ of summons, an appearance was entered for him by the plaintiff sec. stat. after which he pleaded in person. The case not being tried within the proper time after issue joined, the defendant gave notice of his intention to move for judgment as in case of nonsuit. This notice was given by attorney. Held, that this was sufficient notice to the plaintiff of the appointment of the attorney by the defendant, and that it was not necessary for him to give notice of his bringing in an attorney on the other side.*

In this case Prentice had early in the term obtained a rule nisi for judgment, as in case of a nonsuit, for not proceeding to trial.

Miller now showed cause against the rule, and it appeared that in this case the appearance had been entered for the defendant by the plaintiff sec. stat. The defendant pleaded to the declaration in person. No notice was given by him to the plaintiff of bringing in an attorney to defend the action for him, but the notice of the present motion for judgment as in case of a nonsuit, was given to the plaintiff by an attorney on behalf of the defendant. It was now contended that this was irregular, and that the rule must be discharged. That although it was not necessary to obtain a judge's order to bring in an attorney to defend the action in this case, yet that if one was brought in after a defendant had pleaded in person, as was the case here, notice thereof must be served on the plaintiff or his attorney.

Erle, J. I do not think any fresh notice is necessary where the next step to be taken in a cause is taken by an attorney then appointed. The step taken by him is sufficient notice of the appointment to the other side. This is very different to changing an attorney, for

there are very important liabilities attached to an attorney who has once appeared in a suit, which it is desirable not to have put on record without notice to the other side. Not so in bringing in an attorney. This the Master informs me is always done without notice, and there is no decision, the other way that I am aware of. I think the practice is reasonable, and so I shall not disturb it.

Miller then showed cause on the merits.

Rule discharged on a peremptory undertaking.

### Reg. v. Broom and another.

QUASHING WRIT OF ERROR.

*When the transcript of the record of a writ of error has gone up to the court of error, this court has no power to grant a rule to quash the writ of error under 8 & 9 Vic. 68, sec. 5. The motion must be made to the court of error.*

Phillimore moved for a rule calling on the defendants in this case to shew cause why the writ of error sued out herein should not be quashed, or why the recognizances which had been entered into should not be estreated. In this case the defendants were convicted at the last assizes at Oxford, of a riot and assault arising out of a prize-fight. They however sued out a writ of error, and put in bail, under 8 & 9 Vic., cap. 68. They however took no steps to prosecute the writ in any way, and their attorney, on being applied to on the subject, gave evasive answers. Under these circumstances it was submitted that this court would quash the writ of error under the 5th section of the act.

Erle, J. The Master informs me that the transcript of the record in error has gone up to the court of error; and I find by the act of parliament (8 & 9 Vic., cap. 68, sec. 5) that this motion must be made in the court in which the writ of error is pending. Your motion must therefore be made to the court of error.

Rule refused.

### Cornwall v. Ives.

OUTLAWRY.—WRIT OF ERROR.

*In suing out a writ of error to reverse an outlawry which has issued against a defendant for not putting in an appearance in an action, it is not necessary that the outlaw should make an appearance in the action to enable him to sue out the writ; nor is it necessary that the attorney suing out the writ should depose that he is authorized by the outlaw to sue out the writ; that being only necessary on proceedings to reverse an outlawry by motion, and not where it is done by writ of error.*

THIS was a rule nisi obtained by Petersdorff, calling on the defendant to show cause why the writ of error sued out herein, or the allowance thereof, should not be set aside for irregularity. This was a writ of error brought for the purpose of causing an outlawry which had

issued against the defendant at the suit of the plaintiff for not having appeared in this action. The ground of the writ of error being that the defendant was beyond seas at the time of the awarding of the exigent. The irregularity relied on was that no appearance had been entered in the original action by the defendant on suing out the writ of error, and that the attorney's clerk making the affidavit on which the writ issued, did not state that he was authorised by the defendant in the matter.

*Martin, Q. C. and Beavan*, showed cause against the rule, and contended *first*, that as this was a writ of error to reverse an outlawry it was a writ of right, and so that the court had no power to set it aside; *secondly*, that it was not necessary that any appearance should be entered in the original action by the defendant on suing out the writ; *third*, that this court had no power to set the writ of error at all on the allowance thereof, but that the application must be made to the Court of Chancery. *Jones v. De Lisle*, 10 B. Moore, 617, acted on in *Boreman v. Brown*, 1 Dowl. N. S. 281, with regard to the objection that the attorney's clerk did not appear to be authorized by the outlaw, that is not necessary on writ of error; a contrary doctrine is laid down in *Chitty's Archbold*, 1148, but the cases cited to support that position are all in cases of rules to set aside outlawries upon motion, and not upon writ of error. These cases too are the only authority for the supposition that it is necessary that the outlaw should enter an appearance in the original action when he sues out his writ of error.

*Petersdorff* in support of the rule contended, that the outlaw must put himself in court in the original action, by entering an appearance therein, before he can sue out his writ of error. He also relied on the objection, that the attorney's clerk suing out the writ of error did not state that he was authorised to do so by the outlaw, he relied on the practice as laid down by Mr. Archbold in his Q. B. Practice, 1148, but admitted that the cases cited were on motion to reverse outlawry and not on writ of error.

*Erle, J.* This rule must be discharged. I cannot find any rule making it necessary for an outlaw suing out a writ of error to reverse an outlawry, to make an appearance in the original action; the officers of the court inform me that it is not the practice so to do, and I think that it would not be a consistent thing that he should be obliged to do so, for if he were obliged to appear why should not the plaintiff declare against him? Now it may be that the ground for the writ may be that the plaintiff has improperly outlawed the defendant, as by proceeding without any writ of summons at all in the action, or any *distringas*. If, therefore, the defendant were obliged to appear to enable him to reverse the outlawry, this would be allowing the plaintiff to take an advantage of his own wrong. The stipulations as to the appearance of the outlaw are all of them upon reversal, and I do not find any

authority as to appearing before the issuing of the writ of error; and it does appear to me very inconsistent that the outlaw should appear before the outlawry against him is reversed. The objection as to the attorney being obliged to state that he is authorized by the outlaw, is not based upon any authority except the dictum of Mr. Archbold, which is not borne out by the authorities he cites. The rule will therefore be discharged, but as the plaintiff may have been misled by a passage in a very standard book, without costs.

Rule discharged without costs.

### Common Pleas.

*In re Hannah Jane Page.* Hilary Term, 1848.

#### AFFIDAVITS SWORN ABROAD.—DEFECTIVE JURAT.

*The rule of court of Michaelmas Term, 37 Geo. 3, as to the form of the jurat in affidavits, applies to affidavits sworn abroad. Where therefore there appeared in the jurat of affidavits sworn at Calcutta, an interlineation, and the omission of the names of the deponents (there being more than one), the court would not allow them to be received and filed.*

In this case the acknowledgment of Hannah Jane Page, a married woman, under the provisions of the 3 & 4 William 4, cap. 74, sec. 79, had been taken at Calcutta, under a commission issued for that purpose, and the jurat to the necessary affidavits verifying such acknowledgment was as follows:

by each of the above named deponents,

"Sworn at the Police Office, Calcutta, J. W. B., this 4th day of October, 1847. Before me,

"J. W. BRICK,

One of her Majesty's justices of the peace for the town of Calcutta."

The registrar of the court had refused to receive and file the acknowledgment and affidavits, on the ground that the above jurat was irregular, according to a rule of court of Michaelmas Term, 37 Geo. 3, which declared, "That in every affidavit sworn in court or before any judge or commissioner thereof, and made by two or more deponents, the names of the several persons making such affidavit shall be written in the jurat; and that no affidavit shall be read or made use of in the jurat of which there shall be any interlineation or erasure."

*Channell, Sergeant*, moved that the court would direct the officer to receive and file the acknowledgment and affidavits, submitting that the rule in question ought not strictly to be applied to affidavits taken before competent persons abroad, where the rules of the courts of this country could not be considered as accurately known.

*Per curiam.* The rule adopted by this court expressly requires that the names of the deponents should appear in the jurat of the affidavits, and that there should not be any interlineation. In the present case the jurat

is defective in both these respects, and to depart from the accuracy required by the rule under some circumstances, would be opening a door to much mischief. There is no good reason why the same practice should not apply to affidavits sworn abroad as well as here. The attorney in England might without difficulty have sent out such proper instructions to Calcutta as would have prevented any irregularity. As the jurat at present exists, it is clearly defective, and the affidavits ought not therefore to be received.

Application refused.

### Exchequer.

*Rance v. James.* Jan. 20, 1848.

#### PROHIBITION TO A COUNTY COURT.

*A prohibition will be granted to restrain the judge of a county court from proceeding in*

*an action, founded upon a judgment of this court.*

In this case a rule nisi had been obtained for a prohibition to the County Court of Cambridge, to restrain him from going on with a trial, founded upon a judgment of this court for a sum under 20*l*.

*Naylor* now moved to make the rule absolute. A prohibition had been granted under similar circumstances, to restrain proceedings before the judge of the Palace Court (*Anon*, Salk. 439.) There the jurisdiction extended to all personal actions, (8 Blk. Com. by Stewart, 76,) whereas that of the county courts was less extensive. This court therefore would, *à fortiori*, grant the rule in the present case.

No cause was shown.

*Per curiam.* As no cause is shown, you may take your rule.

Rule absolute.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Appeal Cases.

#### REGISTRATION OF VOTERS.

[THE re-assembly of parliament renders it desirable to select for the present series of the Analytical Digest the decisions of the Court of Common Pleas on Election Appeals. They are as follow :—]

#### AMENDMENT BY REVISING BARRISTER.

See *Claim*, *Notice of*.

1. *Postponing the hearing of*.—The court will not postpone the hearing of an appeal, in order to afford time to give the necessary notice, upon a suggestion that the difficulty has arisen from the circumstance of their having appointed an unusually early day for the hearing of appeals; there having been ample time to give the notice between the day appointed and the day on which the decision of the revising barrister was pronounced. *Adey v. Hill*, 4 C. B. 38.

2. *Signature of indorsement by the revising barrister*.—An appeal tendered within the proper time, having been rejected by the officer because the indorsement had not been signed by the revising barrister, as required by the 6 & 7 Vict. c. 18, s. 42. The court allowed it to be entered *de bene esse*, on the fifth day of the Term, due diligence appearing to have been used to obtain the signature within the first four days. But see *Wanklyn v. Wollett*, 4 C. B., p. 86, and *post*, *Pring v. Estcourt*, 4 C. B. 71.

3. *Paper books*.—*Delivery nunc pro tunc*.—In registration appeal cases, the rule is, that the paper books must be delivered to the judges four days before the day appointed for the hearing of the appeals, and the court will

not entertain an application for leave to deliver them *nunc pro tunc*, unless some good reason be shown for the delay. *Tulmer, appellant, and Allen, respondent, and two other appeal cases*. 35 L. O. 175.

See *Notice*; *Signature of Indorsement*.

#### APPELLANT.

*Who may be*.—*Quære*, whether a mere agent, not personally interested in the subject-matter, can be named as appellant to prosecute a consolidated appeal. *Wanklyn v. Wollett*, 4 C. B. 86.

#### ASSIGNEE OF RENT CHARGE.

2 W. 4, c. 45, s. 26.—The assignee of a rent-charge is not entitled to be registered, unless he has been in the actual receipt of it for six months before the last day of July. *Hayden v. Overseers of Tiverton*, 4 C. B. 1.

Case cited in the judgment: *Murray v. Thorniley*, 2 C. B. 217; 1 Lutw. Reg. Cas. 446.

#### BURGAGE TENURES.

2 W. 4, c. 45, s. 19.—*Freehold interest*.—A claimed to vote in respect of a burgage tenement in an ancient borough. The case found, that burgage tenements within the borough had always been conveyed by deed of grant, or bargain and sale, without livery of seisin, and without a lease for a year, or any inrolment; that no surrender or admittance was required, nor was any fine paid upon descent or alienation; that the mode of descent was agreeably to the common law, except that females inherited, not as coparceners, but by seniority; that the interest of a *feme covert* was passed without any separate examination of the wife; that the widow of a person dying seised of a burgage tenement had the whole during her chaste viduity; that burgage tenements had always been devisable in the same way as ordi-



nary freeholds; that they were held subject only to the payment of certain fixed annual rents payable to some individual; and that no other services had been performed or payments made in respect of them.

**Held**, that in the absence of evidence on the face of the case to show that the freehold was in any other person, it must be assumed that *A.* had such a freehold tenure as to entitle him to be registered, the value being sufficient. *Busher v. Thompson*, 4 C. B. 48.

#### BURGESS BY RIGHT OF BIRTH.

See *Reserved Rights*.

#### CLAIM, NOTICE OF.

**Form and service of.**—6 & 7 Vict. c. 18, s. 3.—A parish consisted of four divisions, popularly, but improperly, called townships. Four overseers were appointed for the whole parish, one being selected from among the inhabitants of each of the so-called townships. In making out the lists of county voters, the overseer who acted for each division made out a separate list, and each overseer published a separate notice under the 6 & 7 Vict. c. 18, s. 3, sched. (A.) No. 2, requiring persons entitled to vote in respect of property situate within his township to send in their claims to him. These notices were in each case signed by the particular overseer who acted for that division, and by the assistant overseer, who therein styled themselves "Overseers of the Township of —."

A notice of claim was directed to, and served upon, the overseer of the particular so-called township in which the qualifying property was situate. This notice being objected to, before the barrister at the revision, he corrected the mistake in the lists, under the power conferred upon him by s. 40, and disallowed the objection: **Held**, that the barrister had properly exercised his discretion, and that the notice was, under the circumstances, sufficient, and well served. *Elliot v. Overseers of St. Mary within, Carlisle*, 4 C. B. 76.

#### FREEMAN BY RIGHT OF BIRTH.

See *Reserved Rights*.

#### NOTICE OF APPEAL.

1. **Time of service of.**—6 & 7 Vict. c. 18, s. 62.—The court has no power to hear an appeal, where the respondent fails to appear, unless the appellant has served him with a notice,—under the 6 & 7 Vict. c. 18, s. 62,—of his intention to prosecute the appeal, 10 days at least before the first day appointed by the court for hearing appeals—that is, 10 clear days, exclusive both of the day of service and of the day so appointed. *Norton v. Town Clerk of Salisbury*, 4 C. B. 32.

Case cited in the judgment: *Reg. v. Justices of Salop*, 3 N. & P. 286; 6 Dowl. P. C. 28.

2. **Time of service of.**—6 & 7 Vict. c. 18, s. 62.—The court has no power to hear an appeal, where the respondent fails to appear, unless the appellant has served him a notice,—under the 6 & 7 Vict. c. 18, s. 62,—of his in-

tention to prosecute the appeal, 10 days at least before the first day appointed by the court for hearing appeals—that is, ten clear days, exclusive both of the day of service and of the day so appointed. *Adey v. Hill*, 4 C. B. 38.

3. **Time of service of.**—6 & 7 Vict. c. 18, s. 62.—**Constructive appearance.**—**Paper books, delivery of.**—An application by the respondent for leave to deliver paper books after the proper time, does not dispense with the notice required to be served upon him by the 6 & 7 Vict. c. 18, s. 62. *Grover v. Bontems*, 4 C. B. 70.

4. **Time of service of.**—6 & 7 Vict. c. 18, s. 62.—The decision of the revising barrister took place on the 16th October. The appellant's attorney was taken ill in the last week of that month, and died on the 7th November:—**Held**, that this was no excuse for the absence of the notice to the respondent required by section 62, and that the court had no power, under section 64, to aid the appellant by postponing the hearing. *Pring v. Estcourt*, 4 C. B. 73.

5. **Time of service of.**—Where an appeal was tendered within the first four days of the Term, with a notice imperfectly signed, the court refused to allow the appeal to be entered (the defect being cured) on the 5th day. *Petherbridge v. Ash*, 4 C. B. 74.

6. **Signature of appellant.**—The notice of the appellant's intention to prosecute his appeal, under the 6 & 7 Vict. c. 18, s. 62, must be signed by the appellant himself; the signature of an agent will not suffice. *Petherbridge v. Ash*, 4 C. B. 74.

See *Qualification*, 3.

#### OBJECTION, NOTICE OF.

1. **Description of the objector.**—In a notice of objection under the 6 & 7 Vict. c. 18, s. 17, the objector was described as "*R. F.*, of, &c., on the list of voters for the borough of *L.*" The register of voters for the borough of *L.* consists of four separate lists, viz., one of 101 householders for each of three townships comprised in it, and one of the freemen of the borough. The objector's name was on the last-mentioned list only: **Held**, that he was insufficiently described in the notice; and that the inaccuracy of description was not cured by section 101. *Eidsforth v. Farrer*, 4 C. B. 9.

Case cited in the judgment: *Wansey v. Perkins*, (Quigley's case), 7 M. & G. 127; 8 Scott, N. R. 954; 1 Lutw. Reg. Ca. 235.

2. **Description of the objector's place of abode.**—6 & 7 Vict. c. 18, s. 7.—In a notice of objection, the place of abode of the objector was described as "*The Oaks*" (without the addition of the parish, township, or other district,) "on the register of voters for the parish of *St. W.*" In the list of voters for the parish of *St. W.*, the objector's place of abode was described as "*St. W.*" and his qualifying property as "*The Oaks*." **Held**, that the description was insufficient, and could not be aided by a reference to the list of voters, so as to show that the place called "*The Oaks*" was in the parish of *St. W.*; and that the objection was not removed by the finding of the revising barrister



that the place referred to was in fact in the parish of St. W. *Wollett v. Davis*, 4 C. B. 115.

3. *Notice of objection.*—*Date and service of notice.*—A notice of objection under the 6 & 7 Vict. c. 18, s. 17, dated of the day and month, without the year, is insufficient.

The list of voters was signed by three of the overseers and one of the churchwardens, and the service of the notice of objection was upon another churchwarden, who had not signed the list: *Held*, that the notice was well served. *Beelen v. Hockin*, 4 C. B. 19.

4. *Service of.*—A notice of objection, addressed to the voter at A., described as his place of abode in the borough list, was left at his office in B. The office in B. was not the voter's place of abode, and he had no residence in A. The revising barrister decided that the notice had not been given to, or left at the place of abode of the voter, as stated in the list, within the meaning of the 6 & 7 Vict. c. 18, s. 17. *Held*, that his decision was correct. *Allen v. Greensill*, 4 C. B. 100.

5. *Sufficient statement of place of abode.*—*Questions of law and fact.*—In a notice objecting to a party's right to be put on the register of voters for the borough of Cheltenham, that borough being all within the parish of Cheltenham, the objector's place of abode was stated to be "5, Sherborne Street," and then was added "on the list of voters for the parish of Cheltenham." *Held*, that such description of the place of abode appeared on the face of the notice to be sufficient in point of law, and as the revising barrister had decided that it was sufficient in point of fact, his decision was conclusive, and must be affirmed.

Whether from the generality of the description of the objector's place of abode, it can be said to point sufficiently to a particular locality, may be a question of law, but where a certain locality appears to be referred to, the question of whether the description is sufficient to give the information required by the 6 Vict. c. 18, s. 17, is one of fact upon which the decision of the revising barrister is conclusive. *Sheldon, appellant, and Fletcher, respondent*. 35 L. O. 217.

#### PAPER BOOKS, DELIVERY OF.

See *Appeal*; *Notice of Appeal*, 3.

#### QUALIFICATION.

1. *House and shop not within one curtilage.*

—*Appurtenances.*—A. occupied a shop, which, together with a house and other premises, also occupied by him, constituted a sufficient qualification in point of value, but neither being sufficient alone. The shop was separated from the rest of the premises by a yard, in the exclusive occupation of A., but there was no complete curtilage or fence surrounding the whole, the yard being approached by a passage at the side of the shop, open to the street, which was also the property of A., but used by the tenant of the adjoining house in common with him:

*Held*, that the shop could not be joined with the other premises, so as to constitute one en-

tire qualification, under the stat. 2 W. 4, c. 45, s. 27. *Powell v. Price*, 4 C. B. 105.

2. "Other building" within 2 W. 4, c. 45, s.

27.—*Exclusive occupation.*—*Control over key of outer door.*—Where two claimants to vote occupied in the one case, two rooms in a house, and in the other case, a counting-house, at a sufficient rent, and the landlord in the former instance occupied a shop and parlour on the ground floor, and had a key to the outer door in common with the claimant, and in the other instance occupied a counting-house in the same house, the key to the outer door of which was exclusively kept by a clerk of the landlord's, who resided on the premises for protection's sake and the accommodation of the occupiers, whom he let in and out at night when the outer door was closed; the landlord in neither case himself residing on the premises.

*Held*, that the claimant in respect of the occupation of the rooms was as much entitled to vote as the claimant who occupied the counting-house, the former being within the meaning of the words "other building" in the 27th section of the 2 W. 4, c. 45; that both claimants possessed a sufficiently exclusive right of possession to constitute them tenants and not lodgers; and that the circumstance of the claimant in the one case having the use of the key to the outer door in common only with the landlord, and of the key of the entrance in the other case being exclusively kept by a resident clerk of the landlord, did not qualify the right and interest of the claimants so as to make them the less tenants. *Toms, appellant, and Luckett, respondent*; and *Downing, appellant, and Luckett, respondent*, 35 L. O. 263.

3. *Lands held in succession.*—*New notice of claim.*—Where a party already on the register of voters in respect of the occupation of certain land, ceased to hold that land, and became and continued to be the occupier of other land in the same parish, but failed to send in any new notice of claim after such change. *Held*, that under the 4th and 40th sections of the 6 Vict. c. 18, he was not entitled to have his name retained on the register of voters, although it appeared that the description of his qualification in the register exactly embraced both the qualifications. *Barton, appellant, and Grey, respondent*, 35 L. O. 148.

4. *Successive occupation.*—*Description of qualifying property.*—*Amendment by revising barrister.*—The appellant's qualification to vote was in respect of two houses occupied in immediate succession. In the list of voters, however, his qualification was described in the third column as "house in succession," and in the fourth "Butcher Row," the latter being the place where the house last occupied by the appellant was situate. *Held*, that the revising barrister had no power under the 6 Vict. c. 18, s. 40, to amend the list by adding s, to the word house in the third column, and inserting the name of the place where the first house occupied was situate, in the fourth column. *Onions, appellant, and Bowdler, respondent*, 35 L. O. 194.

## RATES, NON-PAYMENT OF.

See *Reserved Rights*.

## RENT-CHARGE.

See *Assignee*.

## RESERVED RIGHTS.

1. *Burgesses or freemen by right of birth*.—The corporation of *M.* consists of four classes of burgesses or freemen,—1. Capital burgesses (in whom alone was the right of voting prior to the passing of the Reform Act;) 2. Assistant burgesses; 3. Landholders; 4. Free burgesses or commoners. Vacancies in the third class are supplied from the fourth by seniority, and, in the other classes respectively, by election: *Held*, that one who was a member of the fourth class, *by right of birth*, before the 1st of March, 1831, and became a "capital burgess" by election, after that day, is not disqualified as

an elector by the 2 W. 4, c. 45, s. 32. *Gale v. Chubb*, 4 C. B. 41.

2. *Inhabitants paying scot and lot*.—A party entitled, before the passing of the 2 W. 4, c. 45, to vote as an inhabitant householder paying scot and lot, does not, by the 33rd section of that act, lose his qualification by having omitted for one year to pay his rates before the last day of July. *Nicks v. Field*, 4 C. B. 63.

Case cited in the judgment: *Cullen v. Morris*, 2 Stark. N. P. C. 577.

## SIGNATURE OF INDORSEMENT.

*By the revising barrister*.—6 & 7 Vict. c. 18, s. 42.—The indorsement of an appeal not having been signed by the revising barrister until the 5th day of Michaelmas Term, the court refused to allow the appellant to be heard. *Wanklyn v. Woollett*, 4 C. B. 86.

## BUSINESS OF THE COURTS.

## CHANCERY SITTINGS.

Lord Chancellor.

After Hilary Term, 1848.

AT LINCOLN'S INN.

|           |         |   |
|-----------|---------|---|
| Tuesday   | Feb. 8  | { The 1st Seal—Appeal Motions and Appeals.          |
| Wednesday | 9       | { Appeals.  |
| Thursday  | 10      | { Appeals.  |
| Friday    | 11      | { (Petition-day,) unopposed Petitions, and Appeals. |
| Saturday  | 12      | { Appeals.  |
| Monday    | 14      | { Appeals.  |
| Tuesday   | 15      | { Appeals.  |
| Wednesday | 16      | { Appeals.  |
| Thursday  | 17      | { Appeals.  |
| Friday    | 18      | { (Petition-day) unopposed Petitions and Appeals.   |
| Saturday  | 19      | { Appeals.  |
| Monday    | 21      | { Appeals.  |
| Tuesday   | 22      | { Appeals.  |
| Wednesday | 23      | { The 2nd Seal—Appeal Motions.                      |
| Thursday  | 24      | { Appeals.  |
| Friday    | 25      | { (Petition-day) unopposed Petitions and Appeals.   |
| Saturday  | 26      | { Appeals.  |
| Monday    | 28      | { Appeals.  |
| Tuesday   | 29      | { Appeals.  |
| Wednesday | March 1 | { Appeals.  |
| Thursday  | 2       | { Appeals.  |
| Friday    | 3       | { (Petition-day) Petitions and Appeals.             |
| Saturday  | 4       | { Appeals.  |
| Monday    | 6       | { Appeals.  |
| Tuesday   | 7       | { Appeals.  |
| Wednesday | 8       | { The 3rd Seal—Appeal Motions and Appeals.          |
| Thursday  | 9       | { Appeals.  |
| Friday    | 10      | { (Petition-day) unopposed Petitions and Appeals.   |

|           |    |   |
|-----------|----|---|
| Saturday  | 11 | { Appeals.  |
| Monday    | 13 | { Appeals.  |
| Tuesday   | 14 | { Appeals.  |
| Wednesday | 15 | { Appeals.  |
| Thursday  | 16 | { Appeals.  |
| Friday    | 17 | { (Petition-day) unopposed Petitions and Appeals. |
| Saturday  | 18 | { Appeals.  |
| Monday    | 20 | { Appeals.  |
| Tuesday   | 21 | { Appeals.  |
| Wednesday | 22 | { The 4th Seal—Appeal Motions and Appeals.        |
| Thursday  | 23 | { (The General Petition-day)                      |

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

## Master of the Rolls.

AT THE ROLLS.

Tuesday Feb. 8 Motions.

AT THE JUDICIAL COMMITTEE.

|           |    |
|-----------|----|
| Wednesday | 9  |
| Thursday  | 10 |
| Friday    | 11 |

AT THE ROLLS.

|          |    |   |
|----------|----|---|
| Saturday | 12 | { Pleas, Demurrers, Causes, Exceptions, and Further Directions. |
|----------|----|---|

AT THE JUDICIAL COMMITTEE.

|           |    |
|-----------|----|
| Monday    | 14 |
| Tuesday   | 15 |
| Wednesday | 16 |
| Thursday  | 17 |
| Friday    | 18 |
| Saturday  | 19 |
| Monday    | 21 |
| Tuesday   | 22 |

AT THE ROLLS.

Wednesday 23 Motions.

AT THE JUDICIAL COMMITTEE.

|          |    |
|----------|----|
| Thursday | 24 |
| Friday   | 25 |

AT THE ROLLS.

Saturday . . . 26 { Pleas, Demurrers, Causes,  
Exceptions, and Further  
Directions.

AT THE JUDICIAL COMMITTEE.

Monday . . . 28  
Tuesday . . . 29

AT THE ROLLS.

Wednesday March 1 {  
Thursday . . . 2 { Pleas, Demurrers, Causes,  
Friday . . . 3 { Exceptions, and Further  
Saturday . . . 4 { Directions.  
Monday . . . 6 {  
Tuesday . . . 7 {

Wednesday . . . 8 Motions.  
Thursday . . . 9 {  
Friday . . . 10 {  
Saturday . . . 11 {  
Monday . . . 13 {  
Tuesday . . . 14 {  
Wednesday . . . 15 { Pleas, Demurrers, Causes,  
Thursday . . . 16 { Further Directions, and  
Friday . . . 17 { Exceptions.  
Saturday . . . 18 {  
Monday . . . 20 {  
Tuesday . . . 21 {  
Wednesday . . . 22 {  
Thursday . . . 23 {  
Friday . . . 24 {  
Saturday . . . 25 Motions.  
Monday . . . 27 { Petitions in the General  
Paper.

Short Causes, Consent Causes, and Consent Petitions, on the following Saturdays, viz., the 12th and 26th February, and the 4th, 11th, and 18th March, each day, at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

Tuesday . . Feb. 8 The 1st Seal—Motions.  
Wednesday . . 9 { Pleas, Demurrers, Exceptions, Causes, and Fur.  
Thursday . . 10 { Dirs.  
Friday . . . 11 { (Petition - day) Petitions,  
(unopposed first,) Short  
Causes and Causes.  
Saturday . . 12 {  
Monday . . . 14 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Tuesday . . 15 { ther Directions.  
Wednesday . . 16 {  
Thursday . . 17 {  
Friday . . . 18 { (Petition - day,) Petitions,  
(unopposed first,) Short  
Causes, and Causes.  
Saturday . . 19 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Monday . . 21 { ther Directions.  
Tuesday . . 22 {  
Wednesday . . 23 The 2nd Seal—Motions.  
Thursday . . 24 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Friday . . . 25 { (Petition - day,) Petitions,  
(unopposed first,) Short  
Causes, and Causes.

Saturday . . . 26 {  
Monday . . . 28 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Tuesday . . . 29 { ther Directions.  
Wednesday, March 1 {  
Thursday . . . 2 { (Petition - day,) Petitions,  
(unopposed first,) Short  
Causes and Causes.  
Friday . . . 3 {  
Saturday . . . 4 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Monday . . . 6 { ther Directions.  
Tuesday . . . 7 {  
Wednesday . . 8 The 3rd Seal—Motions.  
Thursday . . . 9 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Friday . . . 10 { ther Directions.  
(Petition - day,) Petitions,  
(unopposed first,) Short  
Causes and causes.  
Saturday . . . 11 {  
Monday . . . 13 { Pleas, Demurrers, Causes,  
Tuesday . . . 14 { Exceptions, and Further  
Wednesday . . 15 { Directions.  
Thursday . . . 16 {  
Friday . . . 17 { (Petition - day,) Petitions,  
(unopposed first,) Short  
Causes and Causes.  
Saturday . . . 18 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
Monday . . . 20 { ther Directions.  
Tuesday . . . 21 {  
Wednesday . . 22 The 4th Seal—Motions.  
Thursday . . . 23 { (General Petition - day,) Short Causes and Petitions.

Vice-Chancellor Knight Bruce.

Tuesday . Feb. 8 { (The 1st Seal) Motions and  
Causes.  
Wednesday . . 9 Bankrupt Petns. and Causes  
Thursday . . . 10 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
ther Directions.  
Friday . . . 11 { (Petition-day) Petitions, and  
Causes.  
Saturday . . . 12 Short Causes and Ditto.  
Monday . . . 14 Bankrupt Petns. and Causes  
Tuesday . . . 15 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
ther Directions.  
Wednesday . . 16 Bankrupt Petns. and Causes  
Thursday . . . 17 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
ther Directions.  
Friday . . . 18 { (Petn.-day) Petitions and  
Ditto.  
Saturday . . . 19 Short Causes and Causes.  
Monday . . . 21 { Bankrupt Petitions and  
Causes.  
Tuesday . . . 22 { Pleas, Demurrers, Exceptions, Causes, and Further  
Directions.  
Wednesday . . 23 (The 2d Seal) Motions.  
Thursday . . . 24 { Pleas, Demurrers, Exceptions, Causes, and Fur-  
ther Directions.

|                      |   |                      |   |
|----------------------|---|----------------------|---|
| Friday . . . . 25    | { (Petition-day) Petitions and Ditto.                           | Monday . . . . 21    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Saturday . . . . 26  | Short Causes, and Causes.                                       | Tuesday . . . . 22   | {   |
| Monday . . . . 28    | Bankrupt Petitions.   | Wednesday . . . . 23 | { The 2nd Seal—Motions and Causes.                              |
| Tuesday . . . . 29   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Thursday . . . . 24  | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday, Mar. 1    | { Bankrupt Petitions and Causes.                                | Friday . . . . 25    | {   |
| Thursday . . . . 2   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Saturday . . . . 26  | { Short Causes, Petitions, (unopposed first,) and Causes.       |
| Friday . . . . 3     | { (Petition-day) Petitions and Ditto.                           | Monday . . . . 28    |   |
| Saturday . . . . 4   | Short Causes and Causes   | Tuesday . . . . 29   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Monday . . . . 6     | { Bankrupt Petitions and Causes.                                | Wednesday March 1    |   |
| Tuesday . . . . 7    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Thursday . . . . 2   |   |
| Wednesday . . . . 8  | The 3rd Seal—Motions.   | Friday . . . . 3     |   |
| Thursday . . . . 9   | { Pleas, Demurrers, Exceptions, Causes, and Further Dirs.       | Saturday . . . . 4   | { Short Causes, Petitions, (unopposed first,) and Causes.       |
| Friday . . . . 10    | { (Petition-day) Petitions and Ditto.                           | Monday . . . . 6     | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Saturday . . . . 11  | Short Causes and Causes.  | Tuesday . . . . 7    | {   |
| Monday . . . . 13    | { Bankrupt Petitions and Causes.                                | Wednesday . . . . 8  | { The 3rd Seal—Motions and Causes.                              |
| Tuesday . . . . 14   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Thursday . . . . 9   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday . . . . 15 | Bankrupt Petitions.   | Friday . . . . 10    | {   |
| Thursday . . . . 16  | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Saturday . . . . 11  | { Short Causes, Petitions, (unopposed first,) and Causes.       |
| Friday . . . . 17    | { (Petition-day) Petitions, and Ditto.                          | Monday . . . . 13    |   |
| Saturday . . . . 18  | Short Causes and Ditto.   | Tuesday . . . . 14   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Monday . . . . 20    | Bankrupt Petitions.   | Wednesday . . . . 15 |   |
| Tuesday . . . . 21   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. | Thursday . . . . 16  |   |
| Wednesday . . . . 22 | (The 4th Seal) Motions.   | Friday . . . . 17    |   |
| Thursday . . . . 23  | { (General Petn.-day,) Petitions and Short Causes.              | Saturday . . . . 18  | { Short Causes, Petitions, (unopposed first,) and Causes.       |
|                      |   | Monday . . . . 20    | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
|                      |   | Tuesday . . . . 21   | {   |
|                      |   | Wednesday . . . . 22 | { The 4th Seal—Motions and Causes.                              |
|                      |   | Thursday . . . . 23  | { The General Petition-day, Petitions & Short Causes.           |

## Vice-Chancellor's Sittings.

|                     |   |
|---------------------|---|
| Tuesday . . Feb. 8  | { The 1st Seal—Motions and Causes.                              |
| Wednesday . . . 9   | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Thursday . . . 10   | {   |
| Friday . . . . 11   | { Short Causes, Petitions, (unopposed first,) and Causes.       |
| Saturday . . . . 12 | {   |
| Monday . . . . 14   |   |
| Tuesday . . . . 15  | { Pleas, Demurrers, Exceptions, Causes, and Further Directions. |
| Wednesday . . . 16  | {   |
| Thursday . . . . 17 | {   |
| Friday . . . . 18   |   |
| Saturday . . . . 19 | { Short Causes, Petitions, (unopposed first,) and Causes.       |

## COMMON LAW SITTINGS.

## Common Pleas.

IN BANCO.

This Court will, on Tuesday the 8th day of February next, and four following days, hold Sittings, and will proceed in disposing of the business now pending in the *Paper of New Trials*, and in the *Special Paper*, and will also proceed to give judgment in certain of the matters that will then be standing over for the consideration of the Court.

\* \* For the Queen's Bench, and Exchequer of Pleas Sittings in *Banco*, see p. 332, *ante*.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 12, 1848.

‘Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

## THE CONSTITUTION AND PRACTICE OF THE ARCHES' COURT.

OUR last number contained, without any material abridgment, the observations which fell from Sir Herbert Jenner Fust, in reference to the unfortunate circumstances disclosed in the case of *Geils v. Geils*, which have necessarily drawn so large a share of public attention to the constitution and practice of the court over which that learned civilian presides.

It is natural and not unbecoming, that the learned judge should be sensitive, and anxious to repel the attacks made upon a tribunal in which he has practised or presided for a period exceeding forty years; and, so far as these attacks have been directed personally against Sir Herbert Jenner Fust, it may be at once conceded that his vindication is complete. We cannot, indeed, assent to the proposition, that the general correctness of a learned judge's decisions, has been conclusively established, because an inconsiderable proportion of his decrees have been reversed, on appeal. In every court much depends upon the discretion of a judge, in cases where an appeal is neither practicable nor advisable, and a weak or timid judge may generally find means to save himself from the mortification consequent upon the frequent reversal of his decisions. Our estimate of the soundness and justice of the judgments pronounced by the learned judge of the Arches, however, is founded on the fact, that in the lengthened period during which he has filled the judicial seat—a period of thirteen years—with con-

siderable opportunities of ascertaining the feelings of the profession, we have not heard his decisions impugned or complained of more frequently than those of any other judge in the courts of law or equity. We believe, Sir Herbert Jenner Fust is entirely mistaken when he supposes that any one has accused him of “general corruption,” or “undue partiality.” His unblemished character during the course of a long and honourable professional career would be a sufficient answer to such a charge, and in truth no such charge has ever been made. It is said, with the force that truth never fails to bring with it, that Sir Herbert Jenner Fust is unfortunately placed as the sole judge in a court in which the suitors, at one side or the other, are constantly represented by his nearest relatives. It is contended that this is a position in which no judge, however pure or high-minded, ought to be constantly placed. It is a position in which the determination to resist ordinary impulses may lead to results unfavourable to justice,—in which the anxious desire to be just may dispose the most upright man to deal unjustly. At all events, it is a position not calculated to secure public confidence in the exercise of judicial functions, and is therefore to be deplored. Upon this subject, on which so much has been said and written, we do not find a single remark in the prepared and elaborate statement put forth by the judge of the Arches' Court.

The learned judge has also misdirected his explanations upon another point. He seems to have conceived that those who call for the reform or abolition of the court over

which he presides, found their arguments upon the supposed abuse of his patronage, in respect of offices connected with the court. Upon this assumption the learned judge has laboured very vigorously, and it must be confessed, very triumphantly, to disabuse the public mind. He has shown conclusively that he never has had any patronage to dispose of, beyond the appointment to two insignificant offices, the emoluments of which taken together do not amount to 50*l.* per annum; and that those have been disposed of in a manner most praiseworthy and honourable to the patron. The complaint which the learned judge has demonstrated to be so totally unfounded, however, only existed in his own imagination. It has never been publicly relied upon, or alluded to, by those who wish to see the Arches' Court reformed, or placed on a different footing, for different and far more substantial reasons. It is thought by many, that the court, in matters unconnected with church discipline, has ceased to be useful; that it exercises a jurisdiction not only useless, but pernicious and mischievous; and that its continued existence, as at present constituted, tends to perpetuate a system disgraceful to an enlightened community, and wholly repugnant to the great principle, that laws should afford equal means of redress to the rich and poor. The course of proceeding pursued in the Ecclesiastical Courts in what are called matrimonial causes,—as exemplified in this case of *Geils v. Geils*,—renders those courts an intolerable nuisance, and the evil is enormously aggravated by the circumstance, that those who have the misfortune to be dragged before such tribunals, are forced to resort for professional assistance and advice in circumstances the most novel and delicate—not to those in whom they have previously reposed their confidence—but to strangers, who, however able and respectable individually, consist for the most part of gentlemen whose names are unknown beyond the *snuggery* of Doctors' Commons. The Ecclesiastical Courts are based upon principles too narrow and illiberal to entitle them to, or render it possible they can possess, the sympathy or support of the legal profession or the public. For all this, we unreservedly admit, the judge of the Arches' Court is no more to blame than any one of his predecessors. He appears to do himself the injustice of supposing that the attacks directed against the institution of which he is a minister, are levelled personally at him. He seems to find it impossible to dissociate himself from the courts in which so large a

portion of his life has been passed, or, perhaps, from habit has become insensible to the defects of a system which shocks others. "It has no faults, or he no faults can see." But the public will have little difficulty in distinguishing between the venerable judge and the odious monopoly with which his name is accidentally connected. The one may, and we trust will, live to enjoy the esteem of his own circle, and the respect of the world, long after the other has been abolished with the universal approval of the disinterested portion of the community.

Our readers cannot fail to have observed, that the address of the judge of the Arches' Court was not exclusively of a defensive or vindictory character. Pursuing a course of procedure almost peculiar to the Ecclesiastical Courts, he indulges pretty liberally in recriminative charges. He meets Dr. Addams' attack upon the court by commenting in terms of unqualified disapproval upon the language, the tones, and the gestures of the learned advocate, and accuses him in express terms of a flagrant violation of professional etiquette, in drawing the pleadings, answers, and interrogatories, without communication with the proctor acting for Mrs. Geils; and with having personally seen and communicated with two of the most important witnesses. Upon those charges Dr. Addams has yet had no opportunity afforded him for explanation. In ordinary cases, the course said to have been pursued by that learned gentleman would certainly be considered unusual, inconvenient, and irregular. Whether the circumstances of this extraordinary case justified so remarkable a departure from ordinary rules, we cannot venture at present to determine: it is a question of importance, affecting the professional character of Dr. Addams, upon which it is only fair that public opinion should be suspended, until ample opportunity is afforded for explanation.

## ATTORNEYS UNDERTAKING TO INQUIRE INTO SUFFICIENCY OF SECURITY.

THE number of the Queen's Bench Reports last published contains a case\* which raises a question as to the extent of liability an attorney incurs who is retained to investigate the sufficiency of a security.

\* *Hayne v. Rhodes and others*, 8 Q. B. 342.

The point discussed was, whether from such a retainer an undertaking can be implied to examine into the value of the security, as well as the title of the grantor, and this question was ultimately decided in the negative.

The facts upon which the action was founded were shortly as follow:—The plaintiff (Mr. Hayne) being desirous of becoming secretary of a proposed company, to be called the Holborn Improvement Company, in order to obtain that situation, agreed with a Mr. Ross, the promoter of the company, and who had the power of appointment, to advance a sum of 600*l.*, for the benefit of the company, Ross securing the repayment of that sum, with interest, upon the occurrence of certain events, by charging some landed property in Somersetshire, in which he possessed, or was supposed to possess, some interest. The plaintiff advanced the money, and the proposed security was duly executed by Ross. Messrs. Rhodes and Co. were the plaintiff's solicitors in this transaction, and looked into the sufficiency of Ross's title to the lands in question. The security was afterwards supposed to be inadequate, and Hayne brought an action against his attorneys, and averred in his declaration, that he employed them as attorneys, to use due care in ascertaining the title of Ross to the lands which were to be charged as security for payment of 600*l.*, and to take due care that the same should be a sufficient security for payment of the 600*l.*<sup>b</sup> The defendants specially traversed this allegation, and at the trial, it appearing that the defendants had been retained in the ordinary manner to investigate the security, Lord Denman, (who tried the cause,) thought the evidence did not support the declaration, for that the averment in the latter, that the defendants were to take care that the security was sufficient, imported that they were to inquire into its value, and as no such undertaking was created by the retainer, or could be implied, he nonsuited the plaintiff.

Upon a rule for setting the nonsuit aside, the import of the allegations in the declaration, that the defendants promised to use due and proper care and diligence in and about ascertaining the title, and to take due and proper care that the lands should be a sufficient security for the repayment of the money advanced, were fully considered; and

it was insisted, on the part of the defendants, that the second branch of the promise alleged, extended to the ascertainment of the sufficiency of the land charged in point of value, otherwise, it was said, it would be a mere repetition of the first branch, which provides for the ascertainment of the legal requisites.

The court, however, was of a different opinion, and Lord Denman expressed his regret that he had not suffered the case to go to the jury. "I thought," said the learned chief justice, "that the undertaking, as laid, did not stop at the legal investigation of the title, but meant more, but upon further consideration, I think this is not so." Mr. Justice Patteson, also, very clearly pointed out the distinction between ascertaining that the title was good, and that it was a sufficient security. "A title," says that learned judge, "may be good, and yet from its nature insufficient as a security; for instance, if the party had a perfectly legal title, but only for a short time. The two phrases do not mean the same thing, therefore the undertaking to ascertain the sufficiency of a security does not comprehend an undertaking to inquire into its value."

Upon these grounds, the court thought the nonsuit incorrect, and made the rule absolute to set it aside.

## NOTES ON EQUITY.

### POWER OF TRUSTEES TO DEVISE TRUST PROPERTY.

THERE are conflicting decisions regarding the power of trustees to devise trust property. The Vice-Chancellor of England holds that a trustee ought not to devise an estate vested in him in that character, but to permit it to descend. This was decided in the case of *Cooke v. Crawford*.<sup>a</sup> There, one William Hall devised his real estates to William Hall, John Burkitt, and W. Woolley, in trust that they, or the survivors or survivor of them, or the *heirs* of the survivor, should, as soon as conveniently might be after his decease, but at their discretion, sell the same; and he empowered them and their *heirs* to make contracts with, and conveyances to, the purchasers; and declared that the receipts of them or the survivor or survivors of them, or the *heirs*, executors, or administrators of such survivor, should be good discharges to the purchasers; and he directed that they, their heirs, administra-

<sup>b</sup> The form of the declaration, so far as it involves the question submitted for the consideration of the court, was that given in 2 Chitt. Plead. (7th ed.) p. 282.

tors, and assigns, should hold the proceeds of the sale upon certain trusts. Burkitt and Woolley disclaimed, and William Hall, the son, alone acted. He devised the estates to M. and N. upon the trusts affecting the same. After his death, M. and N. agreed to sell the estates to P.

The Vice-Chancellor, in his judgment, said,—

“It is plain that the persons whom the surviving trustee has thought proper to appoint to execute the trusts of the testator’s will, are persons to whom no authority was given for that purpose, by the testator; and there is no case in which a person not mentioned by the party creating the trust, has been held entitled to execute it. I have always understood, ever since the point was decided in *Hawkins v. Kemp*,<sup>b</sup> (or rather was, as the judges said in that case, properly abandoned by the defendant’s counsel, as not capable of being contended for,) that, where two or more persons are appointed trustees, and all of them, except one, renounce, the trust may be executed by that one. That decision, if it may be so called, has been approved of by Lord Eldon and other judges.”

His Honour observed, that the testator had not used the word “assigns” either in the clause in which he created the trust for sale, or in either of the two clauses that followed it, in which he pointed out the machinery by which the sale was to be effected.

“He does not introduce that word until he begins to speak of something that is to be done after the sale has taken place, that is, until he declares the trusts upon which the *proceeds of the sale* are to be held. Therefore, it is plain that when William Hall, who, by the disclaimer of Burkitt and Woolley, became the sole trustee, thought fit to devise the legal estate that was vested in him, he did an act which he was not authorized to do.”

And then the Vice-chancellor emphatically protested against the proposition, which was stated in the course of the argument, that it was a beneficial thing for a trustee to devise an estate which was vested in him in that character.

“My opinion is,” (said his Honour,) “that it is not beneficial to the testator’s estate that should be allowed to dispose of it to whomsoever he may think proper; nor is it lawful for him to make any disposition of it. He ought to permit it to descend; for, in so doing, he acts in accordance with the devise made to him. If he devises the estate, I am inclined to think that the court, if it were urged so to do, would order the costs of getting the legal estate out of the devisee to be borne by the

assets of the trustee. I see no substantial distinction between a conveyance by act *inter vivos* and a devise; for the latter is nothing but a *post mortem* conveyance; and, if the one is unlawful, the other must be unlawful. It appears to me that, as my decision in *Bradford v. Belfield*<sup>c</sup> has been acquiesced in, the question raised by the demurrer in this case is concluded by that decision; but if it is not, then the authority of *Townsend v. Wilson*<sup>d</sup> is binding on the point.”

Lord Langdale, in another case, to which his lordship gave great consideration, decided differently. The case we refer to was that of *Titley v. Wolstenholme*.<sup>e</sup> There the testator, Richard Titley, devised real and personal estate, on certain trusts, which the court considered the testator intended to be performed by the trustees named, and the survivors and survivor, and by the heirs and assigns, or by the executors or administrators, of the survivor. The will contained no power to appoint new trustees. The surviving trustee, Robert Tebbutt, devised and bequeathed the trust estates and powers to Edward Titley, David Waddington and Charles Wolstenholme, upon the trusts of the first will. The Master of the Rolls said,—

“The question is, whether the devisees in trust, under the will of Robert Tebbutt, have, by virtue of the devise, lawfully become trustees of the estates devised by the will of Richard Titley. It is admitted that the legal estates and interests which were vested in Robert Tebbutt, as surviving trustee and executor, have, by virtue of his will, become vested in his devisees and legatees; that they, as such devisees and legatees, are under an obligation so to dispose of such legal estates and interests, that the *cestuis que trust* under the will of Richard Titley may have the benefit of them; but it is alleged that they have not themselves any legal authority to execute the trusts, and consequently, that the new trustees ought to be appointed for the purpose by this court.

“The testator has not, by his will, given any power to appoint new trustees, and it is thereupon argued, justly, that the trustees, or the survivors or survivor of them, could not, by any assignment or act *inter vivos*, relieve themselves from the responsibilities and duties of the trust; but it is further contended, that the same disability attends any assignment by way of devise or bequest, and that, although the estate and property may be vested in the devisees or legatees of the surviving trustee, the duties and the responsibilities attending the execution of the trusts remain in the legal re-

<sup>c</sup> 2 Sim. 264.

<sup>d</sup> 1 Barn. & Ald. 608; 3 Madd. 261.

<sup>e</sup> 7 Beav. 425.



presentatives, real and personal, of the surviving trustee."

His Lordship thus proceeded to state the general doctrine of the court:—

"When a trust estate is limited to several trustees, and the survivors or survivor of them, and the heirs of the survivor of them, and no power of appointing new trustees is given, we observe a personal confidence given, or at least probably given, to every one of the several trustees. As any one may be the survivor, the whole power will eventually come to that one, and he is entrusted with it, and being so, he is not, without a special power, to assign it to any other; he cannot, of his own authority, during his own life, relieve himself from the duties and responsibilities which he has undertaken."

"We cannot assume, (said his Lordship,) that the author of the trust placed any personal confidence in the *heir* of the survivor; it cannot be known beforehand which one of the several trustees may be the survivor; and as to the contingent survivor, it cannot be known beforehand whether he may have an heir or not, or whether the heir may be one, or may consist of many persons, trustworthy or not, married women, infants, or bankrupts, within or without the jurisdiction."

"The reasons, therefore, which forbid the surviving trustee from making an assignment *inter vivos* in such a case, do not seem to apply to an assignment by devise or bequest; which, being made to take effect only after the death of the last surviving trustee, and consequently after the expiration of all personal confidence, may, perhaps not improperly, be considered as made without any violation or breach of trust. It is to take effect only at a time when there must be a substitution or change of trustees: there must be a devolution or transmission of the estate to some one or more persons not immediately or directly trusted by the author of the trust."

The estate, subject to the trusts, must pass either to the *heres natus* or the *heres factus* of the surviving trustee, and if the heir or heirs-at-law, whatever may be their situation, condition, or number, must be the substituted trustee or trustees, the greatest inconvenience may arise, and there are no means of obviating them, other than by application to the court.

"With great respect," (added his lordship,) "for those who think otherwise, and quite aware that some inconveniences, which can only be obviated in this court, may arise from devising trust estates to improper persons, for improper purposes, I cannot at present see my way to the conclusion, that in the case contemplated the surviving trustee commits a breach

of trust by not permitting the trust estate to descend, or by devising it to proper persons, on the trusts to which it was subject in the hands of the surviving trustee. But the case so considered is not the present case. We have in this will expressions which clearly show that the testator intended the trusts to be performed by the "assigns" of the surviving trustee; and in construing the will we must, if practicable, ascribe a rational and legal effect to every word which it contains. We cannot, consistently with the rules of this court, consider the word "assigns" as meaning the persons who may be made such by the spontaneous act of the surviving trustee to take effect during his life; but there seems nothing to prevent our considering it as meaning the persons who may be made such by devise and bequest; and if we do not consider the word "assigns" as meaning such persons, it would in this will have no meaning or effect whatever.

"For these reasons, and under the circumstances of this case, I am of opinion that the devise and bequest made by Robert Tebbutt of the trust estates held by him under the will of Richard Titley, was a good and valid devise and bequest; and that the estates thereby given to Edward Titley, David Waddington, and Charles Wolstenholme, are vested in them, on such of the trusts thereof declared by the will of Richard Titley as now remain to be performed."

## THE PALACE COURT.

THE jurisdiction of the Palace Court is not affected by the County Courts' Act, and as a reasonable remuneration is allowed in that court for professional costs, and the system under which justice is administered there, is in other respects considered more beneficial to suitors than that which prevails in the County Courts, there has lately been a very marked increase of business in that court. Indeed, we have heard that the profits of the limited number of practitioners belonging to the court has increased four-fold since the establishment of the County Courts. The practice, as most of our readers are aware, is confined in the Palace Court to four barristers and six attorneys. A monopoly of this description is, of course, admitted to be highly objectionable, and it is authoritatively stated, that the Attorney-General has intimated an intention of proposing some legislative measure to remedy the evil, but as all the practitioners in the Palace Court have paid considerable sums of money for their offices, it is not to be expected that their exclusive rights can be interfered with without giving them full compensation. Until this difficulty has been satisfactorily adjusted, no material al-

teration is likely to take place in the constitution of the court.

We understand that the attorneys of this court allow the usual agency profit to other attorneys.

## NEW BILLS IN PARLIAMENT.

### AUDIT OF RAILWAY ACCOUNTS.

The preamble states, that it is expedient to afford to the shareholders of railway companies additional facilities for the due and effectual audit of their accounts, and it is proposed to be enacted :

1. That at an ordinary general meeting shareholders, by writing under their hands, shall be empowered to call on the directors to submit the balance sheet for the examination and report of an auditor. But that all the shareholders signing such requisition must have acquired their shares or stock in right of bequest, inheritance, or marriage settlement, or shall have purchased or otherwise acquired the same, six calendar months at the least before the date of the requisition, and that all calls due in respect of such shares must have been first duly paid in full.

2. That a copy of the requisition of shareholders shall be transmitted to the commissioners of railways, who will, without delay, appoint an auditor.

3. That the auditor so appointed shall have full power and authority, and shall be required, to inspect and examine the accounts kept by such company of all the sums received or expended on account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid, and to call for and require the production of all vouchers and other evidence to establish such receipts and payments, and also to examine, as touching the balance sheet of such company, into the capital stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and to report his view of the profit or loss which shall have arisen on the transactions of the company in the course of the year, half year, or other period to which such balance sheet relates.

4. That the auditor so appointed shall prepare his report in duplicate, one copy to be forthwith lodged with the directors of the railway the accounts and balance sheet of which he has examined, and another copy to be transmitted to her Majesty's railway commissioners.

5. That such report of the special auditor appointed under this act shall be laid before the next ordinary meeting of the shareholders of such railway company, and shall be open for the inspection of the shareholders in the manner prescribed to public companies under the provisions of sect. 117 of the 8 Vict. c. 16.

### COUNTY RATES.—JUSTICES.

THIS is a bill (brought in by Mr. Frewen and Mr. Briscoe) reciting in the preamble, that the duties of justices of the peace at general or quarter sessions have been much extended of late years, and in some counties owners of property paying county rates, but not being justices of the peace, have insufficient control in matters relating to the county rates, and that it is expedient to confer on certain owners of property the powers of justices of the peace at general or quarter sessions, so far as regards the administration of the law in affairs relating to county rates; and for that purpose it is proposed to be enacted :

1. That from and after the passing of this act every male person of the age of not less than 21 years, who shall be seised of and in the actual possession of lands, tenements, and hereditaments, or legally or equitably entitled to the rents, issues, and profits of or rent-charge issuing from or out of any lands, tenements, and hereditaments of the yearly value of 600*l.* sterling, clear of all deductions, except parochial rates, whether such lands, tenements, and hereditaments be of freehold or copyhold tenure, and be held in fee, for life, or for a term of years of not less than 60 years, or for the life or lives of any other person or persons, and which lands, tenements, and hereditaments shall be rated to the county rate, shall, without any appointment by commission or otherwise, have power and be authorized to attend the general or quarter sessions of the peace for the county, riding, parts, division, or liberty in which his property shall be situate, and shall at such general or quarter sessions in every way perform the same functions in every respect as any justice of the peace would be by law empowered in matters relating to county rates or county police rates, and that as fully and entirely as if such person had been named and appointed a justice of peace by any commission: Provided always, That, except while any matters relating to the county rates or stock, or county police rates, shall be under consideration, all such persons so hereby authorized shall withdraw from and take no part in any of the duties or functions of the justices of the peace in any other matters.

2. That all such persons who shall be so qualified shall be styled "Justices of County Rates," and all the privileges, liabilities, protections, remedies incident to and connected with, and for and against justices of the peace, as by law provided, shall apply to such justices of county rates, so far as their functions extend, as fully as a justice of the peace is by law privileged or may be proceeded against.

3. That before any person shall act or assume to act as a justice of county rates, he shall take and subscribe in open court, at the general or quarter sessions of the peace for the county or riding, parts or division of county for which he shall claim to act, an oath or affirmation that he is duly qualified by virtue of estate, as hereinbefore provided, to act as such justice, and also the oaths of allegiance,

supremacy, and abjuration, which oaths shall be taken before the clerk of the peace for the said county; and that such clerk of the peace shall preserve and register such subscribed oath amongst the records for the county, and be authorized to charge for the administering and registering such oaths to each person taking the same the sum of 2s. 6d.

4. That the penalty for acting as a justice of county rates, without qualification, having been sworn in the manner hereinbefore provided, shall be 50*l.* for every time he shall so sit or assume to act.

5. That peers of parliament, privy councillors, and members of parliament may act as justices of county rates without qualification or taking oaths.

6. That any justice of county rates becoming bankrupt or insolvent, or taking the benefit of any act for the relief of insolvent debtors, or being outlawed, or having sold or parted with his interest in the property in respect of which he originally claimed, shall be disqualified from acting.

7. That the act shall not extend to Scotland or Ireland.

## PROPOSED IMPROVEMENTS IN THE PRACTICE OF SHORT-HAND WRITING.

An able pamphlet has just made its appearance on this subject, the substance of which, so far as it relates to the Superior Courts, we shall lay before our readers.

It is well known that the strict rule of the Courts is not to admit short-hand writers' notes, except upon oath, when the party is called into the witness-box, and then only to refresh his memory; but they are found to afford such important aid, that practically they are referred to every day in Westminster Hall. The cost is considerable, and is seldom allowed in taxation, as between party and party, which rule deprives parties of a facility they might fairly be allowed; but where the stake at issue will justify the expense, an attorney or solicitor never thinks of trying an action, or an issue, or bringing a cause of any magnitude to a hearing without employing a short-hand writer. He knows that under the most perfect system of jurisprudence mistakes and miscarriages will occur, and that to rectify these it will be necessary to bring as much as possible of what passed, as it passed, before the Court of Appeal or of final decision. He also knows, that supposing nothing of the sort to take place, it may still be important to bring the matter under review—the facts proved; the arguments used; the views taken—and that should he by some accidental enforcement of the rule not be able to bring these notes before the court, they will still be invaluable for other scarcely less important purposes.\*

\* One is instructing counsel. It often happens, almost always in Chancery, that the

To illustrate this:—The object of an issue from Chancery is to inform the conscience of the court. The judge, before whom the matter comes in the shape of a motion, or on the hearing of the cause, is not bound by the verdict; he looks at the evidence and the summing up of the judge, and draws his own conclusion from both. It is therefore of great importance that he should be furnished with the fullest possible information of what has passed,—not only the substance but the exact words. I need not say how much may turn on a particular expression—the mode, the phrase in which a thing is asserted or denied by a witness: or the precise terms in which a turning point has been left to the jury. Accordingly, nothing is more common than to hear the Judges in Equity on such occasions ask to have the short-hand writer's notes handed up to them. Their experience at the bar may probably have led them to the conclusion, that with all the qualifications due to such things, these notes do, practically, supply the desideratum.<sup>b</sup>

Again, in the common law courts, the trial at *Nisi Prius* is, practically, little more than

counsel who has to move or argue the case has not been present at the trial; to him, therefore, the short-hand writer's notes are indispensable. The information they convey could not be obtained, at any cost, by other means. Even where counsel has been at the trial these notes are of the greatest value. The note he takes on the back of his brief in the hurry of *nisi prius* can scarcely be more than an aid to memory: it can never furnish him with the exact thing he wants; and being liable to so many imperfections, it can never obtain implicit credit: contradicted by the judge's note, it goes for nothing; and it is almost always contradicted on the other side.

It is not necessary to go through the various other purposes for which the preservation of oral matter is of almost equal importance, and for which, accordingly, short-hand is an indispensable instrument. Short-hand writers are called into the witness-box every day in cases of perjury, &c., and convictions take place upon their testimony, as the only persons competent to speak to the *ipsissima verba*, upon which the question must frequently depend. Their services are also called for in still more important matters. In Mr. O'Connell's case the whole issue of a great State prosecution depended on the testimony of the short-hand writer. Had his accuracy in the particular case, or general credibility, been successfully impugned, the result would have been a defeat; yet according to the strict rule, this gentleman's notes could not be received by one of our courts in *banco*.

<sup>b</sup> At present this can only be done by consent or in the absence of objection. It is in the power of either party to deprive the court of the facility, be it more or less, which these notes afford. The objection, however, is rarely taken in Chancery.

the first stage of a suit : if it involve any great question of law or fact, it is brought up on motion, and decided, substantially, upon the law and the facts by the court in *banco* ; going down again, indeed, in the event of a new trial, to the constitutional tribunal, but with such lights thrown on the points in the course of the discussion they have undergone above as generally to indicate the ultimate result. Accordingly, in these cases the great object is to put the court in *banco* in the same position for weighing the value of the evidence as the judge at the trial, or, in the case of an application on the ground of misdirection, in the same position as the jury ; and this can only be done, in any degree approaching to perfection, by means of short-hand. These notes, when taken with ordinary accuracy, present, what a learned judge once called " a daguerreotype picture of the proceeding," and do really put the court in a more favourable position than the judge below, inasmuch as they can look at the evidence or the summing up both as a whole and its various parts, in the calm of the closet, undisturbed by the distraction of *nisi prius*, or the task of taking it down.

Accordingly, as is well known, the general practice in the common law courts, is to refer to the short-hand writer's notes, whenever a point arises on which it is supposed they can throw light, and this even when the question is with respect to a ruling or direction of the judge, upon which more jealousy might properly prevail, and the rule be held more strict ; as, among other cases, in the *Marquis of Anglesey v. Lord Hatherton*, (10 M. & W., 244,) where Mr. Baron Alderson says, " having read the whole of the summing up of the judge from the short-hand writer's notes, I must say, considering the length and complexity of the case, there is not only no misdirection, but it is a marvellously correct summing up."

Mr. Justice Coleridge in his edition of *Blackstone's Commentaries*, (Vol. iii. p. 393,) observes :

" The ground of the application (for a rule) if it arise from what passes on the trial, is taken from the judge's report ; and certainly so far as regards the evidence, no method can be suggested more decorous or proper. But it will not be deemed disrespectful in me, I trust, if I suggest a doubt whether the same mode is so unobjectionable when the application is made on the ground of a misdirection. In the course of a summing up, when a judge lays down the law in a manner which dissatisfies the counsel of either party, it is not usual, nor would it be decorous, to interrupt him or discuss the point then ; but the counsel commits to paper at once the position which he does not assent to, and if, upon examination, he remains confirmed in his dissent, he makes his application in the following term for a new trial. The judge often makes no note of his own summing up at the time, in the press of business, his attention being immediately called

to the next cause ; or if he does, it must frequently happen that all that he has said will not occur to him. In either case it may be very painful, on many accounts, to the judge himself, and never can be satisfactory to the parties, that the decision of the court should be upon his report—the question is not between his notes and the counsel's notes, but between his recollection and notes taken at the moment. Certain it is, that public satisfaction is not always given in this way, when not the slightest imputation is intended to be thrown on the intentions of the judge who reports ; and I would venture to suggest whether more might not be given, and the learned judge be relieved from a painful difficulty, if it were made the duty of the associate, or some competent officer, to make a minute of the direction of the judge ; this minute might be immediately handed to him even before the deliberation of the jury ; if he found therein an error, he might correct it at once, but if he approved of it, it would remain to be appealed to whenever the direction should be brought in question thereafter."

It is said any man who walks into Westminster Hall, may call himself a short-hand writer, and the courts, having no means of distinguishing the degree of credit due to individuals, are as liable to have imperfect or wilfully falsified notes, handed up to them, as any others, and have therefore no alternative but to reject all alike. It must be admitted that the fact is as here stated : the profession is open to all comers, and may well be supposed to exhibit among its members many varieties of qualification, and no doubt to the risk arising from this, whatever the extent of it, the courts are exposed. The late Lord Abinger once stated from the bench, with a candour becoming his station, that during a long professional life, he had derived the greatest assistance from short-hand notes, and had found that though occasionally disfigured by errors, they were such as a practised eye could readily detect.

A suggestion has been thrown out repeatedly, viz., the appointment of " sworn short-hand writers " to the different courts, whose duty it should be to take notes of each case, and read or transcribe them on any question arising. As this has proceeded from very high authority, and no attempt has ever been made to carry it into effect, it appears that obstacles, deemed insurmountable, have presented themselves. The plan, if not altogether impracticable, would probably be found to be attended with great difficulties. It would also destroy the only existing school for the art, viz., the courts, and consequently, the next generation of short-hand writers would, in all probability, be inferior to the present.

The first step, even with a view to this suggestion, would be to establish a *test for admission to the practice of the art*, by which you would have a body with well ascertained qualifications, competent to the discharge of every duty. Of course, to create another monopoly would make matters worse. Give men exclu-

sive privileges, and you destroy competition, and in proportion as you do that, you diminish the chances of improvement. The present indiscriminate competition of the courts is doubtless mischievous; one of its effects is to keep out men of a superior order; but regulating competition and destroying it are very different things. Establish an adequate test of competency, and subject to that condition competition will do good. In short, put the profession on a respectable and, if you please, responsible footing, and then *let it alone*.

It is thought by some, that the same things which qualify for the bar should be required for admission for this profession, and, it is suggested,—1. That short-hand writers should be members of the Inns of Court, this position implying the possession of two of the requisite qualities, education and moral fitness; and, 2. That they should require a “certificate” of skill in short-hand writing from another quarter. “Certificated short-hand writers” would then occupy a position analogous to that of pleaders “below the bar,” and certainly placing them within the sphere and influence of the higher branches of the legal profession would do more than positive regulations to raise the practice of the art above abuse or suspicion; and as some short-hand writers are members of the Inns of Court, I am not aware that any difficulty would arise on the part of those learned bodies. However, to the second part of the proposition—that they should be certificated after due consideration by a competent body—there can be no reasonable objection. Suppose, for instance, the “Law Society,” to whom the public is already under so much obligation for conducting the examination of candidates for one branch of the legal profession, should be willing to undertake this minor and in every way less onerous duty; no one can doubt that it might be safely entrusted to their hands, and nothing could be easier than for gentlemen themselves in the habit of employing short-hand writers, to frame adequate tests of the qualifications they ought to possess, and to apply them to the particular cases.

It is reasonable to conclude that short-hand writers would thus feel themselves in a conspicuous and responsible situation, under the eye and within the reach of the courts; and as the certificate might be withdrawn on adequate cause, anything like falsification would be out of the question.

Of course all the courts would be asked to do, would be to say “We will receive the notes of persons occupying such and such a position,”—not as authoritative but *valent quantum*: with the credit to which they are fairly entitled, as the statements of *experts*, but with the qualifications which belong to all reports, those of Messrs. Adolphus & Ellis, and other learned persons, never being taken as conclusive but subject to correction.

Minor regulations may be suggested; among others, that in the case of a motion on the ground of a misdirection, the judge to be furnished with a copy of the note intended to be

referred to (at present, if a member of another court, he can have no means of knowing what he is represented to have said :) the cost, in fit cases, or part, to be allowed on taxation, at the discretion of the Master; the short-hand writer in all cases to sign the note, or append a declaration of its accuracy, &c. But these are matters of detail peculiarly for the consideration of a committee of one of the houses of parliament, having before it the opinions of the judges, and gentlemen of experience and practical knowledge in other situations.

The above or similar regulations would afford every reasonable security against incompetency or malpractice.

We must defer that part of the pamphlet which relates to parliamentary short-hand reporting, and shall take an early opportunity of offering some remarks on the details of the plan here proposed.

#### WOLVERHAMPTON LAW ASSOCIATION.

THE Annual General Meeting of the members of this association was held on the 14th of January, Mr. Robinson in the chair.

The report of the committee was read, from which we extract the following passages:

“Cases in reference to the professional conduct of two solicitors, practising within the society’s district, have been referred to the committee. In regard to one of those cases, affidavits (prepared with an ulterior view) were submitted to the consideration of the committee, and they recommended an application thereon to the Court of Queen’s Bench, which was made, and resulted in a rule calling on the solicitor implicated to answer the matters of such affidavits. In the other case, which arose on a charge of unprofessional conduct, the committee, after an investigation, came to the conclusion that there was not any reason for the charge, and that it arose out of a misunderstanding as to the precise terms on which a certain negotiation was commenced.

“The committee obtained, during the last session, 12 petitions, signed by upwards of 100 solicitors practising in this county, and in Worcestershire, against the long-standing grievance of the annual certificate duty, but a consideration of the urgent and engrossing nature of the measures which then occupied the attention of parliament, induced the committee to defer presenting such petitions until the present session, during which it is expected that the Incorporated Law Society, and other law associations, will actively co-operate in an attempt to get rid of the unjust impost.

“The committee have had much pleasure in observing that the copyholders in this district are making efforts to obtain a legislative enactment for compulsory enfranchisement, (with due regard to the rights of all parties interested,) of copyhold property, and the committee recommend that the aid of the society be given towards so desirable an object.”

It appears that very effectual exertions have been made for forming a law library, upon which a sum of about £250 has been already expended.

The members have very liberally subscribed an entrance fee of 10 guineas each, besides the annual subscription.

The following resolutions were adopted:—

1. That the report of the committee be received and entered on the minutes.
2. That Mr. Rutter and Mr. Dent be elected to fill the respective offices of president and vice-president of the association and library until the general meeting in 1849.
3. That Mr. Thorne be elected honorary-secretary and treasurer of the association and library, until the general meeting in 1849.
4. That Mr. Manby and Mr. Crisp be re-elected members of the committee; that Mr. Pinchard, Mr. Browne, and Mr. Bolton be elected members of the committee in lieu of those who go out of office under Rule 8; and, that Mr. Charles Corser be elected a member of the committee in the lieu of Mr. Thorne, who becomes such a member *ex-officio*.
5. That the thanks of this meeting be given to the president, vice-president, secretary, and committee of the past year, for their attention to the interests of the society.
6. That the thanks of this meeting be given to the gentlemen who have made donations to the library.
7. That the report of the committee, and the resolutions of this meeting, be printed, and that a copy thereof be sent to every solicitor practising within the district named in the 1st rule of the society.
8. That the thanks of this meeting be given to Mr. Robinson for his able conduct in the chair.

### PARLIAMENTARY RETURNS.

The following are the questions to which these returns were made:—

1. Description and amount of the several fees legally demandable during the year ending the 5th day of April, 1846, in each court of law or of equity:
2. Aggregate amount received in each of the said courts in respect of the said fees in the year aforesaid:
3. By whom such fees are received in each of the said courts:
4. To whom the fees received in each of the said courts are payable; and manner in which the fees so received in the year aforesaid have actually been applied:
5. Amount of such fees, if any, paid into the Consolidated Fund, and from what source:
6. Amount, if any, paid out of the Consolidated Fund in aid of the expenses of such courts respectively, and to what officers:
7. Sums received by all judges, officers, and servants, and other persons acting in any official capacity in any of the said courts; distinguishing how much of the sum so received

by each of the said persons consists of salary, and how much of Fees; and by whom, and out of what fund, such salary or fees are payable.

### Court of Queen's Bench.

LORD CHIEF JUSTICE DENMAN.

- 1.—Description and amount of fees:  
6s. 8d. on each cause entered for trial before the Lord Chief Justice, on the civil side, and on each traverse so entered on the criminal side.
- 2.—Aggregate amount received in respect of such fees:—40*l*.
- 3.—By whom received:—The marshal on the circuit.
- 4.—To whom payable, and how applied:—In reduction of the circuit expenses.
- 7.—Sums received by the judge:  
As Chief Justice of the Court of Queen's Bench, 8,000*l*; reduced by the income tax, to 7,744*l*; and further, by the expenses of the circuit, to 7,344*l*.

MR. JUSTICE PATTESON.

- 1, 2, 3, 4.—Description and amount of fees, &c.:  
The customary fees received on the circuits on the entry of causes, and in lieu of gloves given by the sheriff when there is no execution, amounted, on the northern circuit, in the spring, to 41*l*. 19s.; on the midland circuit, in the summer, to 20*l*. 6s. 8d.; which sums went in reduction of the circuit expenses, as is customary, and those expenses were thereby reduced to 296*l*. in the spring, to 278*l*. in the summer.
- 7.—Sums received by the judge:
 

|  | £ | s. | d.        |
|--|---|----|-----------|
| Salary, less property tax  | - | -  | 5,000 0 0 |
| Term fee as second judge of the Queen's Bench, under statute 6 Geo. 4, c. 84, s. 7, less property tax      | - | -  | 40 0 0    |
| Salary as Chief Justice of the Court of Common Pleas at Lancaster, property tax having been first deducted | - | -  | 31 5 3    |

MR. JUSTICE COLERIDGE.

- 1, 2, 3, 4.—Description and amount of fees, &c.:  
The marshal pays over 6s. 8d. on each cause, from the courts at Westminster, entered at those places at which the judge, as a judge of assize, presides on the civil side; and 6s. 8d. on each traverse entered, where he presides on the criminal side; and 12s. 4d. each entry of what are termed foreign records at Durham. All these sums are applied, according to the usage, towards the payment of the circuit expenses, which, after deducting these and other small sums generally paid by the sheriffs, have amounted on the average to 300*l*. per circuit.
- 7.—Sums received by the judge:  
Salary as a judge of the Court of Queen's Bench, 5,000*l*. per annum, payable out of the Consolidated Fund, and no fees nor any other emoluments.

As Puisne Judge of the Court of Common

Pleas of Lancaster, for the spring circuit of 1846, the sum of 29*l.* 7*s.* 5*d.*, after deducting the income tax, paid by the Receiver-General of the county Palatine.

The expenses of chambers in Serjeants' Inn, and circuits, are paid out of salary.

#### MR. JUSTICE WIGHTMAN.

1, 2, 3, 4.—Description and amount of fees, &c.:

The marshal pays a fee of 6*s.* 8*d.* on each cause from the courts at Westminster entered at those places where the judge, as a judge of assize, presides on the civil side, and 6*s.* 8*d.* on each traverse entered when he presides on the criminal side; which sums are applied according to ancient usage, towards the payment of the circuit expenses, which expenses, after deducting those sums, have amounted on the average to 340*l.* per circuit.

7.—Sums received by the judge:

Salary as judge 5,000*l.* per annum, payable out of the Consolidated Fund, and no fees nor any other emoluments.

The expenses of chambers in Serjeants' Inn, and circuits, are paid out of the salary.

#### CLERK TO THE LORD CHIEF JUSTICE.

1.—Description and amount of fees, *see Judges' Clerks' Fees*, in the Table of Fees, pursuant to 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees: 97*l.* 4*s.* 8*d.*

3 & 4.—By whom received, &c.:—The clerk. No salary received.

#### CLERKS TO MR. JUSTICE PATTERSON.

1.—Description and amount of fees, *see Judges' Clerks' Fees*, in the Table of Fees, 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees:

|   |   |       |    |    |
|---|---|-------|----|----|
| Fees received at Chambers   | - | 1,246 | 19 | 8  |
| Fees received on the summer circuit, 1845, and spring circuit, 1846 | - | -     | -  | -  |
|   |   | 786   | 8  | 10 |

£2,033 8 6

3.—By whom received:—The clerks to Mr. Justice Patterson.

4 & 7.—To whom payable, and how applied, &c.:

|  |   |   |       |      |
|--|---|---|-------|------|
|  |   | £ | s.    | d.   |
| To the marshal, received from the circuit          | - | - | 283   | 5 10 |
| To the clerks, from chambers and circuit           | - | - | 1,728 | 19 8 |
| To the marshal's man and bailiff, from the circuit | - | - | 21    | 3 0  |

£2,033 8 6

The sums received by the several officers arose entirely from fees. They have no salaries.

5 & 6.—Amount paid into the Consolidated Fund, &c.:—Nil.

#### CLERK AT CHAMBERS AND CRIER ON THE CIRCUIT TO MR. JUSTICE WILLIAMS.

1.—Description and amount of fees, *see Judges' Clerks' Fees*, in the Table of Fees, 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees, 430*l.* 7*s.*

No portion of which consisted of salary, nor was it paid either into or out of the Consolidated Fund, but the whole was received and appropriated by the clerk.

About every fifth year the receipts of the judges' clerks are considerably increased.

#### CLERKS TO MR. JUSTICE COLERIDGE.

1.—Description and amount of fees, *see Judges' Clerks' Fees*, in the Table of Fees, 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees:

|   |   |   |       |      |
|---|---|---|-------|------|
|   |   | £ | s.    | d.   |
| Received at chambers                          | - | - | 1,246 | 18 8 |
| Summer circuit, 1845, and spring circuit 1846 | - | - | 875   | 0 10 |

£2,121 19 6

3.—By whom received:—By the clerks to Mr. Justice Coleridge.

4 & 7.—To whom payable and how applied:

|                                 |   |   |       |      |
|---------------------------------|---|---|-------|------|
|                                 |   | £ | s.    | d.   |
| To the marshal                  | - | - | 382   | 18 4 |
| To the clerks                   | - | - | 1,705 | 4 2  |
| To the marshal's man on circuit | - | - | 14    | 19 0 |
| To the bailiff on circuit       | - | - | 18    | 18 0 |

£2,121 19 6

The sums received by the several officers arose entirely from fees. They have no salary.

5 & 6.—Amount paid into the Consolidated Fund:—Nil.

#### CLERKS TO MR. JUSTICE WIGHTMAN.

1.—Description and amount of fees, *see Judges' Clerks' Fees*, in the Table of Fees, 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees:

|                           |   |   |       |      |
|---------------------------|---|---|-------|------|
|                           |   | £ | s.    | d.   |
| Fees received at chambers | - | - | 1,229 | 8 10 |

Mr. Justice Wightman attended chambers for all the courts during the summer circuits of 1845, and under the table of fees above referred to, the clerk received

|                       |   |   |     |      |
|-----------------------|---|---|-----|------|
|                       |   | £ | s.  | d.   |
| Spring circuit 1846:— |   |   |     |      |
| The clerk and crier   | - | - | 151 | 10 6 |
| The marshal           | - | - | 107 | 15 0 |
| The marshal's man     | - | - | 3   | 18   |
| The bailiff           | - | - | 9   | 9 6  |

£3,707 1 8

3.—By whom received:—By the clerks to Mr. Justice Wightman.

4 & 7.—To whom payable and how applied:



|                                  |        |    |    |
|----------------------------------|--------|----|----|
| To the marshal - - -             | £107   | 15 | 0  |
| To the clerk and crier - -       | 1,868  | 14 | 10 |
| To the second clerk - -          | 1,717  | 4  | 4  |
| To the marshal's man, on circuit | 3      | 18 | 0  |
| To the bailiff, on circuit - -   | 9      | 9  | 6  |
|                                  | £3,707 | 1  | 8  |

The sums received by the several clerks and officers arose wholly from fees. They have no salary.

5 & 6.—Amount paid into the Consolidated Fund:—Nil.

#### MARSHAL AND ASSOCIATE TO THE LORD CHIEF JUSTICE.

1.—Description and amount of fees, *see* Table of Fees, 1 Vict. c. 36.

2.—Aggregate amount received in respect of such fees:—About 1,572*l*.

3 & 7.—By whom received, &c.:—

The court fees, amounting to about 458*l*. as marshal and 480*l*. as clerk at the sittings of *nisi prius*, are received in London and Middlesex by the cryer of the court at *nisi prius*. The fees for the entry of causes received by Lord Denman's clerk, at chambers, amounted to 179*l*. 12*s*. The remanet fees, amounting to 205*l*., and the office fees of the clerk at the sittings of *nisi prius*, amounting to 18*l*. 16*s*., are received by the clerk at the marshal's office; and the several fees on the circuit, amounting to 231*l*. for the Home and Oxford circuit, are received by the cryer of the Lord Chief Justice, on circuit. An additional fee of 1*s*. is paid to the marshal's man on circuit, for the entry of every cause, and 3*s*. to the trainbearer of the Lord Chief Justice in London and Middlesex for every cause tried, which nominally pass through the marshal's hands, and are, with 6*s*. 8*d*. for every cause entered, collected as if they were part of his fees.

4.—To whom payable, and how applied :

Payable to the marshal, after deducting about 353*l*. for two clerks (one of whom assists in court), for office and court-keepers, for land-tax, stationery, printing, &c.

5.—Amount paid into the Consolidated Fund :  
No part paid into the Consolidated Fund.

6.—Amount paid out of the Consolidated Fund :  
No sum paid out of the Consolidated Fund in aid of any expenses connected with these offices.

[To be concluded in our next.]

#### THE CASE OF "*BURON v. DENMAN*."

In answer to a question from Mr. *Urquhart* in the House of Commons on the 8th inst.,

The *Attorney-General* said he believed the question related to the subject of a petition which had been presented to the house with reference to the employment of Sir F. Kelly for the defendants in the case of "*Buron v. Denman*," and was glad of the opportunity of correcting a misapprehension somewhat to the prejudice of his learned friend, and somewhat

unjust to himself. These proceedings were commenced long before he (the *Attorney-General*) had the honour to hold his present office; and on the 5th of June, 1844, Sir F. Kelly argued a demurrer on behalf of the plaintiff. No step was then taken until November, 1846, when a motion, which was made in the Court of Exchequer, was not conducted for the plaintiff by Sir F. Kelly, but by Mr. M. D. Hill. When the case was about to be tried, some short time back, he (the *Attorney-General*) was informed by his honourable and learned friend the counsel to the Admiralty, that Sir F. Kelly was in the case, and directions were given for a brief to be handed to him; and upon an application made to him (the *Attorney-General*) by the Lords of the Admiralty, he advised them not to release Sir F. Kelly from his obligation to advocate the case on behalf of the crown. The course thus adopted has led to the presentation of a petition complaining of what was thus done, and to some newspaper articles attacking Sir F. Kelly and himself (the *Attorney-General*); and he had felt it his duty to write to that gentleman a note in these terms:—

"From what I know of the circumstances, I believe that you are free from blame in this matter, but I shall be glad to receive any communication you may have to make upon this subject, and have only to add, that I am willing, upon the part of the crown, to release you from your engagement to the crown, should you think that under the circumstances you ought to hold a brief for the plaintiff, or to decline to act for either party."

Sir F. Kelly replied as follows:—

"Temple, Jan. 21, 1848.

"My dear *Attorney-General*,—I am favoured with your letter on the subject of the actions by *Buron* and others against Captain Denman.

"The power of the crown to require the services of the Queen's counsel at all times is not disputed; and as in this country every Queen's counsel is known to be under an oath to plead for the crown at its pleasure, I conceive that he accepts every retainer from a subject under as plainly implied a reservation that he may be withdrawn by the crown as that he may be incapacitated by sickness or death. This power may, indeed, be exercised so as to do injustice to individual suitors; and the question now is, whether it has been so exercised in this particular case.

"In the first place I must exonerate you from any responsibility. Mr. Hay's petition seems to imply that I had acted as counsel for the plaintiffs, except during a short interval, until the month of May last, and that you then required my services. The fact is, that I have not so acted in any way since the month of June, 1845; and that in the following month of July (1845), having been appointed *Solicitor-General*, I was almost immediately called upon to advise and assist the ministers of the crown upon certain measures (which became law under the act of the 8 & 9 Vict., c. 92.)



involving the consideration of the whole system of the slave-trade on the coast of Africa, of the conduct of our naval commanders there, and of our relations with the Court of Brazil. It was obvious that I could not, after communications of this nature, and upon these subjects, with the ministers of the crown, assist plaintiffs in these causes, as their leading counsel, after the defence was taken up by the government. It was probably this consideration that induced the then Attorney-General to require my services, and at least restrain me from appearing against the crown upon the trial. You, as Attorney-General, when the causes seemed about to be tried a few months ago, merely abstained from interfering with the decision of your predecessor; and, as far as regards the mere loss of my assistance, there could be no hardship or injustice, for the whole bar was open to the plaintiffs for the selection of a leading counsel to supply my place.

"But it is urged that, after having been consulted and trusted with the case by the plaintiffs, I at least ought not to appear as counsel against them. And certainly, if I possessed a knowledge of any facts imparted to me by the plaintiffs, which I might in a moment of inadvertence disclose, or the consciousness of which could in any way affect my conduct in the cause, I should feel it my duty to request your authority, not indeed to act as counsel for the plaintiffs, for my communications with the crown while I was Solicitor-General render that impossible, but to retire from the case altogether. And, as you allude to imputations in the newspapers, or elsewhere, of undue motives, I must be permitted to observe, that if any counsel, circumstanced as I am, could be influenced by personal considerations at all, he would do his best to obtain the license of the crown to act as counsel for the plaintiffs. If actuated by the love of fame, he would seek to be the leading counsel for the subject (generally the popular party) rather than the third or fourth counsel for the crown. If by the love of money, his interest would equally point the same way; for as you and I well know, the fees paid by the crown are always on a far lower scale than those of individual suitors. In almost the last case in which I was opposed to the crown, my fees were more than nine times the amount of the then Solicitor-General's; and in these very cases they would have been four or five times the amount of even yours, as leading counsel for the crown.

"But, whatever may be my own inclinations, or my interest, I have no grounds upon which I can claim indulgence; for, having only held some consultations upon the pleadings many years ago, and argued a demurrer, I think early in 1845, I have not the slightest recollection of a single fact communicated to me on the part of the plaintiffs, upon which I can found a claim to be excused from appearing as counsel for the crown.

"Whether from the plaintiffs being foreign-

ers, and the importance of all that belongs to our legal institutions being placed beyond suspicion among foreign nations, you may think it right to release me from appearing upon the trial for the crown, is a question entirely for your own consideration, upon which I do not offer an opinion.

"I remain,

"My dear Attorney-General,

"Very truly yours,

"FITZROY KELLY."

He (the Attorney-General) had only to add, that upon receipt of this letter he thought it right to send to the Admiralty, and a communication had been made to the plaintiffs' attorney that the crown would not require the assistance of Sir F. Kelly in this case.

## NOTES OF THE WEEK.

### CHANCERY SITTINGS IN LINCOLN'S INN.

THE Memorial of Chancery Barristers was personally presented by Mr. Lovat to the Lord Chancellor, a few days ago. It had appended to it, the signatures of 253 gentlemen practising at the outer bar of the Court of Chancery. The Lord Chancellor, the Master of the Rolls, and the Vice-Chancellor of England, have severally expressed, before a committee of the House of Commons, opinions strongly favourable to the removal of the sittings to the vicinity of Lincoln's Inn.

A memorial for a similar purpose has since been presented to his lordship from the Incorporated Law Society, and another from a numerous body of solicitors at Manchester, who are interested in the question on behalf, not only of their London agents, but of themselves when in London, and at all times in the furtherance of equity business.

A petition to the same effect, for the signature of London solicitors, will be found at the Hall of the Incorporated Law Society.

### RAILWAY COSTS.—TAXATION AFTER PAYMENT OF AN AGREED SUM.

An appeal came before the Lord Chancellor, on the 8th instant, from an order of Vice-Chancellor Knight Bruce, relating to the taxation of the costs of Sir George Stephen, amounting to 28,000*l.* which had been paid to him as an agreed sum, upon his delivering over various valuable papers and documents. The Lord Chancellor held that the payment had been made under pressure, and made the usual order for taxation.

# PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

## House of Lords.

### NEW BILLS.

Clergy Offences.—Bishop of London.  
Audit of Railway Accounts. For 2nd reading.—Lord Monteagle.

## House of Commons.

### NEW BILLS.

County Rates. For 2nd reading.—Mr. Frewen.  
Vacating Seats of Insolvent Members.—Mr. Moffatt.  
Jewish Disabilities Relief. For 2nd reading.—Lord John Russell.

Epiphany Quarter Sessions. Withdrawn.  
Imprisonment before Trial.—Lord Nugent.  
Removal of Poor.—Mr. Baines.  
Administration of Justice, (Nos. 1 & 2). For 2nd reading.—Attorney-General.  
Special and Petty Sessions. For 2nd reading.—Attorney-General.  
Protection of Justices. For 2nd reading.—Attorney-General.

### REPEAL OF CERTIFICATE DUTY.

Petitions have been presented for the repeal of this impost from the Attorneys practising at  
Exeter,  
Chard,  
Torrington,  
Shaftesbury.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

*Child v. Clive.* Dec. 15, 1847.

RECEIVER.—PARTNERSHIP.—AFFIDAVITS.  
—COSTS.

*The court refused to appoint a receiver of partnership property, though after a dissolution, where there was no allegation of mismanagement or waste, and the effect of the appointment would be to hinder the business being carried on according to the original agreement on which the partnership was founded.*

*The costs of affidavits filed by a defendant in opposition to affidavits filed by the plaintiff after answer, and therefore inadmissible, ordered to be borne by the plaintiff.*

THIS was a motion for the appointment of a manager and receiver of certain mines, alleged to belong to Mr. Child, who had formerly been in a partnership with Mr. Clive, which was dissolved in June, 1846, and to restrain the present manager of the mines from working them. It appeared that there were three mines, the first called the Clangway Mine, which was the principal one; the second called Sneads Mine, and the third Newfield Mine. Clangway Mine could be worked only by means of a drain made through Newfield and Snead's Mines, and that on the original formation of the partnership in 1815, Mr. Child had purchased the latter mines, it being agreed between himself and Clive that he should be entitled to a rent upon the coals raised out of the mines. The capital for working the mines had been supplied by Clive, who had the management of the works, and claimed to set-off the interest upon the capital so advanced against the rent due to Child, as well as a lien for money expended by him in making the culvert to carry off the water from the Clangway Mine. No ac-

counts had been regularly come to during the continuance of the partnership, but the accounts of the earlier years seemed to have been considered as settled, and the books prior to 1832 had been destroyed by Mr. Child's order. There was no complaint of the management of the mines, which was in the same hands, and carried on in the same manner as it had been during the continuance of the partnership. Nor was it alleged that the plaintiff had been prevented from visiting the mines or having access to the books.

Mr. Turner and Mr. Pitman, for the motion, relied on the general practice of the court to appoint a receiver of partnership property, where the partnership had been dissolved and referred to, *Crawshay v. Maule*, 1 Swans, 495.

Mr. Kindersley and Mr. Hal dane, contra.

Lord Langdale said, that when a partnership was dissolved it was generally for the advantage of all parties, that the property should be sold, and each partner should receive his share; and if either excluded the other, or took any unfair advantage, the court would interfere. But here there was no bad management, no sign of waste, and the effect of what was asked could only be to prevent the concern from being carried on as the parties originally agreed it should be. He thought it was not a case in which the court should interfere.

A question then arose as to the costs of certain affidavits filed by the defendants, in opposition to affidavits filed by the plaintiff, which could not be used because they had been filed after the answer.

Lord Langdale said, the costs must be borne by the plaintiff, for he had begun to file the affidavits, and it did not follow that because an affidavit might be in fact useless, therefore the other party was bound to leave it uncontradicted.

*Manners v. Furze.* Dec. 22, 1847.

RECEIVER.—MASTER.

*The court, with the consent of all parties, will appoint a receiver without a reference to the Master.*

In this case, reported at p. 171, Mr. Chandless applied, on the authority of *Ridout v. The Earl of Plymouth*, 1 Dickens, 68, with the consent of all parties, to obtain the appointment of a receiver on his own recognizance, without a salary and without any further reference to the Master.

Lord Langdale made the order.

*Rundle v. Rundle.* Dec. 22, 1847.

INFANT.—TWO SUITS.—MASTER.

*The court will not, as a matter of course, without evidence as to the merits, refer it to the Master to inquire which of two suits instituted on behalf of an infant, and both ready for hearing, is most for his benefit.*

In this case there were two causes on behalf of an infant.

Mr. Malins moved for the usual reference to inquire which was most for his benefit, but

Lord Langdale refused to make the order, upon the ground that both causes were in the paper, and that the application was not supported by any evidence as to the merits.

Vice-Chancellor of England.

*Thomas v. Lewis.* January 21, 1848.

DEPOSITIONS OF WITNESSES.—PASSING PUBLICATION.—ORDERS OF MAY, 1845.

*Replication was filed in a cause in January, 1816, and a subpoena to rejoin issued in February, 1816. Since then nothing was done until April, 1847, when the court refused to allow the plaintiff to withdraw the old replication and file a new one, after which the plaintiff examined witnesses. Held, that publication had not passed in the cause, and that the depositions were regular.*

In this case replication had been filed in a suit on the 23rd of January, 1816. A subpoena to rejoin issued on the 15th February, 1816. Nothing was then done by either party until April, 1847, when plaintiffs served a notice of motion that they might be at liberty to withdraw the old replication and file a new one. This the court refused, and the defendants immediately made a cross motion to dismiss the bill for want of prosecution. This the court also refused, but ordered that the cause should be set down for hearing on the 15th February, 1848. On the 18th of January, the plaintiffs proceeded to examine two witnesses in the cause, and a motion was now made that their depositions taken before the Master might be suppressed, on the ground

that they had been examined after publication had passed in the cause.

Mr. Bethell and Mr. Terrell, for the defendants, contended that the depositions ought to be suppressed on the ground of their being irregular both under the old and the new practice. Under the old practice, by the 17th Order of 3rd of April, 1828, after replication had been filed, service of a subpoena to rejoin was required as a necessary preliminary to the examination of witnesses: that had not been done, consequently the depositions taken were irregular. When the Orders of May, 1845, came into operation they did away with the necessity of a subpoena to rejoin, and by the 44th Article of the 16th Order, and by the 11th Order of May, 1845, "publication was to pass without rule or order on the expiration of two months after the filing of the replication;" therefore, if the case came within the new orders, as replication had been filed so long ago as 1816, publication had passed, and the depositions taken subsequently were consequently irregular. The only course left for the plaintiffs, in order to examine witnesses, was to obtain the express leave of the court, and for that purpose an application was made for leave to withdraw the old replication and file a new one, but refused by the court, and that being so, the depositions which had since been taken must necessarily be irregular.

Mr. Stuart and Mr. Renshaw, contra. The new orders of May, 1845, do not apply: in order to bring the case within their operation there must be a replication filed under the new orders. The replication spoken of in them means exclusively that to which the 93rd Order refers. *Wheatley v. Wheatley*, 7 Beav. 577. It is headed "Joining issue," "No subpoena to rejoin is hereafter to be issued," &c. This does not invalidate the old mode of putting the cause at issue. The word used is hereafter. All subpoenas to rejoin antecedently are therefore left just the same as they were then. The old practice therefore applies, and if so, the old practice must be pursued throughout, under which the cause is at issue; that is admitted, for our application to file a new replication was refused on that ground. Rules have been granted under the old practice, and publication will pass on the 28th of January: the present application must therefore fail, it being founded on the ground that publication has passed. The cases of *Lovell v. Blew*, 13 Sim. 492, and *Spencer v. Allen*, 4 Hare, 455, were also cited.

The Vice-Chancellor. My view of the case is clear. I am satisfied that that which has been adopted ought to be the rule. After the time when the Orders of May, 1845, came into operation, the steps in a cause must be conducted according to the rules prescribed by the orders. I admit that if the effect of the Order of 1845 had been that where a cause had been at issue they then were to operate as a publication (to use the words of the notice of motion); if that were the true construction, the witnesses ought not to have been examined

without first applying to the court. But I had no such idea either when the first [or last] application was made. The first was for leave to file a new replication, but, looking at the great length of time the cause had been slumbering, I thought it wrong to grant such a request; the consequence was, that by refusing it everything was left as it was before. The last application was to dismiss the bill for want of execution. This appeared to be an unfair thing to do. True, nothing had been done for a long time, but I could not act under the new orders, and considering it a case for making a special order, directed the plaintiff to set down the cause for hearing on or before the 15th of February, 1848. I did not proceed on the question, whether publication had passed or not; but it was necessary, in order to do justice, that the bill should not be peremptorily dismissed, and that some time should be appointed for the court to hear it, all parties in the meantime being at liberty to do what they could; therefore, unless in point of fact something has been done to show that publication has passed, I must assume that publication has not passed. Nothing has amounted to passing publication, and therefore I am not at liberty to suppress these depositions on the ground that they have been taken after publication has passed. I mean to adhere to the rule laid down in *Wheatley v. Wheatley*, and *Lovell v. Blew*, in all cases where an application comes on that question: but it appears to me that that has not occurred which is made the ground for the present application.

Vice-Chancellor Knight Bruce.

[In Bankruptcy.]

*Ex parte Poole, in re Symes.* Wednesday,  
Nov. 24, 1847.

COVENANT BY BANKRUPT.—LIEN IN SATISFACTION.

*A bankrupt having covenanted to buy a house and settle the same to certain uses on his marriage, or to invest a sum to effect such a purchase, did not either buy the house or make the investment within the time limited. He afterwards bought a house for a larger sum, and then mortgaged that and other property which had been devised to him, and became bankrupt. The mortgage money came into the hands of the assignees. Held, that the money covenanted to be laid out formed a lien on that mortgage-money, and was to be satisfied out of so much of the same as represented the house bought by the covenantor, and that the remainder, if any, was to be a charge on the equity of redemption of the property devised to him.*

UPON the marriage of Thomas Symes with Charlotte Poole, he covenanted with R. Poole and T. E. Poole, to purchase a house of not less than the value of 1,000*l.*, and that if this were not done within 12 months to invest that sum on mortgage or in the funds, to answer such purpose when an opportunity should arise.

The marriage took place, but no settlement was made nor investment of the money within the 12 months. In July, 1818, Symes, with a view of performing his covenant as was alleged in the petition, bought a house for 1,654*l.*, and in September 1846, the wife having died in the mean time, he employed his solicitor, Mr. Parsons, to borrow 1,800*l.* on mortgage of the house so bought, and also of another house which had been devised to him by his father's will. Six months after Symes became bankrupt, and the mortgage money being in the hands of Parsons, he paid it over to the assignees. One of the trustees now petitioned to have the 1,000*l.* paid by the assignees, on a declaration that he and his co-partner had a lien on the purchased house.

Mr. Russell and Mr. Batten, for the petition, cited *Garthshire v. Chalkie*, 10 Ves. 1; *Woodgatt v. Gresley*, 8 Sim. 180; and *Deacon v. Smith*, 3 Atk. 323.

Mr. Bacon and Mr. Freeling appeared for the petition.

Mr. Bagshawe appeared for the second trustee of the settlement, Mr. T. E. Poole.

Sir J. L. Knight Bruce, V. C.—The assignees are respondents here, and not petitioners, and I think the question of equity is not of sufficient difficulty or obscurity to direct a bill to be filed. In such a state of things, I may decide it now. And according to the well-established principles of the court, established for many years, as I understand them, there is a right on the part of those who are interested under the settlement, represented on this occasion by the petitioners, to treat this estate as a purchase *pro tanto*, with the view of performing the covenant, as against the bankrupt and all claiming under him (but not as against a purchaser for valuable consideration without notice). I apprehend, therefore, that the 1,000*l.* and the 800*l.*, must be apportioned between the devised estates and the purchased estate, both of which were included in the mortgage, as I understand. So much of the 1,000*l.* as was in the possession of Mr. Parsons and found its way from him to the assignees, (being part of the 1,800*l.*) and upon that principle will belong to the purchased estate, must be considered as appropriated to the purposes of the covenant. For the residue of the 1,000*l.*, there will be a lien upon the equity of redemption of the purchased estate after bearing its proportion of the 1,800*l.* The commissioner will settle the proportion if the parties differ.

*Whatford v. Moore.* Jan. 13, 1848.

PARTIES.

*The assignee under the Insolvent Debtors' Act of the husband of a person who, as one of the next of kin, was entitled to a distributive share in the effects of an intestate, was held to be a necessary party in a suit for the administration of the intestate's estate.*

MARY MOORE died on the 17th of January, 1846, intestate, and on the 12th of February

following, William Henry Moore took out letters of administration of her effects. The plaintiff, a married woman, one of the intestate's next of kin, instituted this suit against W. H. Moore, for the administration of the estate under the direction of the court. W. S. Whatford, the plaintiff's husband, in 1838, took the benefit of the Insolvent Debtors' Acts, and a provisional assignee was appointed. The administrator having been served with notice of the insolvency of W. S. Whatford, and the appointment of a provisional assignee, he by his answer submitted whether the assignee of Whatford was not interested in the plaintiff's share, and was not a necessary party to the suit.

Russell and Hallett appeared for the plaintiffs, and Bacon and Walford for the administrator. The discussion principally turned upon the construction of the 88th and 89th sections of the 1 & 2 Vict. c. 110.

The Vice-Chancellor. I think it is clear that under this act of parliament the assignee has such an interest as renders it necessary that he should be made a party to the suit, and the cause must therefore stand over.

Queen's Bench.

(Before the Four Judges.)

*Doe dem. Snape v. Nevill.* Sittings after Hilary Term, 1848.

EJECTMENT.—CONSTRUCTION OF WILL.

*A testator died possessed of freehold and copyhold land in parish A., and some freehold land in parish B. By will he gave his freehold land in A. to his wife for life, remainder in fee to three other persons. In the next and last clause of his will he gave all his real and personal property whatsoever and wheresoever to his wife, her heirs and assigns for ever.*

Held, that the two clauses in the will were not irreconcilable, and that the widow only took a life estate in the freehold land situate in parish A.

*A. B.* died in 1819, possessed of a freehold house, croft, and garden, and a small piece of copyhold land adjoining, which was not during living memory separated by any fence, and the road to the copyhold land was over the freehold. He also died possessed of another detached close of freehold land in another parish. After making a general direction as to payment of debts and legacies, he devised the house and freehold croft and garden adjoining to his wife for life, with remainder in fee to three persons to be equally divided amongst them. "Also, I give and bequeath to my said wife, *M. T.*, her heirs and assigns, for ever, all my real and personal estates whatsoever and wheresoever, unto me belonging, freehold and copyhold, and now surrendered to the uses of my will, and to have the same at my decease; but if my personal estate should not be sufficient to discharge my debts, then I charge my copyhold estate with the payment of the same." The widow, who enjoyed the property for life,

died in 1835, disposing by will of the copyhold and her personal estate, but made no mention of the freehold house and garden. The heir at law of the widow, afterwards commenced an action of ejectment to recover the house, garden, and croft; and the question submitted to the opinion of the court was, whether this property passed under the will of the testator *A. B.* to the widow in fee, according to the last clause in the will, or whether she only took a life estate under the first clause.

Mr. *Whately* for the lessor of the plaintiff. The two clauses in the will are apparently contradictory, because in the first clause the testator gives the house, croft, and garden to his wife for life, with remainder in fee to three other persons, and in the subsequent clause he gives all his real and personal estate to his wife absolutely. The rule in such cases is laid down in *Jarman on Wills*, ch. xv. p. 411. "It has become an established rule in the construction of wills, that where two clauses or gifts are irreconcilable, so that they cannot possibly stand together, the clause or gift which is posterior in local position shall prevail, the subsequent words being considered to denote a subsequent intention. In support of the rule the following cases are cited: *Ulrich v. Litchfield*; <sup>a</sup> *Sims v. Doughty*; <sup>b</sup> *Constantine v. Constantine*.<sup>c</sup>

Mr. *Crowder*, contra. The intention of the testator must be collected from the whole will, and the court will, if possible, give effect to each clause. The last clause must apply to freehold property not already disposed of by the testator. The case finds the testator died possessed of property in another parish, to which the last clause might attach, *Holdfast v. Pardoe*; <sup>d</sup> *Adams v. Clarke*; <sup>e</sup> *Anonymous* (Stopped by the court).

Mr. *Whately* was heard in reply.

Lord *Denman*, C. J. I think, looking at both clauses in the will, that the testator did not intend in the last clause to dispose of all his real property, but only all that was not by a former part of the will already disposed of.

Mr. Justice *Patteson*. I am of opinion that the two clauses in this will are not necessarily irreconcilable, and that putting a reasonable construction on the will, I think the intentions of the testator may be carried out by giving effect to each of the clauses.

Mr. Justice *Wightman*. I am of the same opinion. I think it is obvious that it was not the intention of the testator, in the last clause, to revoke the devise of the dwelling-house, garden, and croft; and there was property left to fulfil all the terms of the will, unless the words "all my real property" must be read all I die possessed of. The case cited from *Dallison's Reports* is an express authority in favour of the defendant, and the other cases cited are not at variance with it. I think,

<sup>2</sup> Atkyns, 372.

<sup>6</sup> Ves. 100.

<sup>9</sup> Mod. 154.

<sup>b</sup> 5 Ves. 243.

<sup>d</sup> 2 Wm. Bl. 975.

<sup>f</sup> Dallison, 63.

therefore, that, on the facts of this case, the claims are not irreconcilable.

Judgment for the defendant.

### Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

*Reg. v. The Justices of Cumberland.* Thursday, Jan. 27, 1848.

RAILWAY COMPANY. — ATTORNEY. — POOR-RATE.

*A railway company entered an appeal against a poor-rate. When the appeal was called on, the respondents objected to the notice of appeal, on the ground that it was signed by an attorney on behalf of the railway company, but who was not appointed such attorney under the corporate seal of the company, and as the railway company was a corporation, the appointment should have been under their corporate seal. The sessions were of this opinion, and dismissed the appeal. A rule nisi for a mandamus to the sessions to hear the appeal having been obtained :*

*Held, that as there was a power in the company's act for the directors to appoint the officers of the company, the appointment of the attorney need not be under seal, but that a parol appointment was sufficient.*

*Held, also, that as no objection was taken in terms at the sessions, that the attorneys giving the notice of appeal were not in fact attorneys to the company, it was not necessary that any evidence should have been given of the fact of such appointment by parol.*

THIS was a rule calling on the Justices of Cumberland to show cause why a *mandamus* should not issue commanding them to enter continuances and hear the appeal of the Whitehaven Railway Company against an assessment to a poor-rate, made on the 9th of Sept. 1847. It appeared by the affidavits that the appeal was duly entered for trial at the last Mich. Sessions for Cumberland, when the respondents objected to the notice of appeal, on the ground that the attorneys signing it on behalf of the company had not been appointed by them as their attorneys under their corporate seal, which they contended was necessary. The sessions held that this objection was a good one, and dismissed the appeal. On the 23rd of November last, the above rule was obtained.

Cowling and Ramshay now showed cause, and contended, *first*, that as the Whitehaven Railway Company is an incorporated company under their act 7 & 8 Vict. c. 64, they were a corporation aggregate, and could only act under their corporate seal, and whether they appointed an attorney, or did any other act of that kind, they must do it under their corporate seal. That there was no distinction between a municipal and any other corporation aggregate. *Arnold v. The Corporation of Pool*, 5 Scott, N. R. 741; 4 M. & G. 860, S. C. In Com. Dig., title "Franchise," F. 13, it is laid down

that "corporations aggregate can do nothing, except under their seal." Then, *secondly*, if the attorney could be appointed by the directors, under the act, by parol, no evidence of any such appointment was given. It will no doubt be contended on the other side, that as there is a power in the company's act, 7 & 8 Vict. c. 64, s. 83, that the powers of the company are to be exercised by the directors, that an appointment by them of the attorney by parol is good. Now, in the first place, we deny that proposition, and say, that although the directors may appoint, they must do so under the seal of the company; but if that be not so, still there was no evidence given in this case of an appointment by parol by the directors, or that the gentlemen who signed the notices had been in the habit of acting as attorneys for the company. As, therefore, the appellants did not prove the initiative step in their appeal, the justices were right in dismissing the appeal, and so this rule must be discharged.

Martin, Q. C., and Greig, contra. It is clear that the directors have power to appoint by parol under the 83rd section, which gives them power to appoint all officers, and that appointment it is not necessary should be under the seal of the company. With regard to the objection, that evidence of such parol appointment was not given, that objection was not taken at the sessions; if it had, the evidence would at one have been given, as the attorneys were in court. The only objection taken was, that they were not appointed under seal. (Stopped by the court.)

Wightman, J. I do not feel any difficulty in this case; it is clear by the affidavit that the second point made now by counsel in showing cause against the rule, was never taken at sessions. The objection taken there was, that the attorneys giving the notices were not appointed under the corporate seal of the company. The sessions adopted this objection, and thought that the directors could only appoint under seal—that objection was clearly an untenable one. The directors have power under their act to appoint the officers of the company, and generally to manage the affairs of the company. I do not think, therefore, that it is necessary that this appointment should have been under seal, and as no objection was taken that the attorneys were not attorneys *in fact* to the company, I do not think it was necessary for the appellants to give evidence that the attorneys giving the notices were such attorneys; if the objection had been taken that this fact was not proved, the case would have been different, as it was the sessions were wrong, and this rule must be absolute.

Rule absolute.

### Common Pleas.

*Webb v. Inwards.* Hilary Term, Jan. 21, 1848.

ACTION ON A BANKER'S CHEQUE. — AFFIDAVIT TO CHANGE THE VENUE.

*The venue in an action on a banker's cheque*

*"not be changed, except on an affidavit stating special circumstances, and the order for that purpose, if obtained on the ordinary form of affidavit merely, will be set aside as irregular."*

The declaration in this action contained a count on a banker's cheque, and another for goods sold and delivered and on account stated. The pleas were the general issue, a traverse of the making of the cheque, and accord and satisfaction. An order dated January 2, 1848, to change the venue from London to Bedfordshire, had been obtained on the ordinary form of affidavit, and a rule *nisi* to set aside that order and bring back the venue to London having been obtained on the 12th of the present month, on the ground that in an action on a banker's cheque, the venue could not be changed except upon an affidavit stating special circumstances.

*Byles*, Serjeant, now showed cause. The rule as to the change of venue in actions on written instruments depends now on the decision of the Court of Exchequer in *Mondey v. Steele*, 8 Mees. & Wels. 640, and the question is, whether this cheque is a bill within the meaning of the judgment in that case. It is submitted, that in popular and ordinary language, a cheque is not a bill, although in strict law it is considered an inland bill. Within the rule, therefore, in *Mondey v. Steele*, the ordinary form of affidavit was sufficient in this action. The want however of an affidavit of special circumstances, if such were necessary, was a mere irregularity, and the present application not having been made until the 12th of January, came too late.

*Talfourd*, Serjeant, in support of the rule, was stopped by the court.

*Per curiam*. The order for changing the venue was granted upon the ordinary form of affidavit, which was not sufficient. It was therefore clear that the order had been irregularly obtained, and it must now be discharged.

Rule absolute.

#### *Edwards v. Cox.*

#### JUDGMENT ON A SCIRE FACIAS.—APPLICATION AT CHAMBERS IN TERM TIME.

*Where, as in the instance of entering up judgment on a scire facias, an application can be made in term time to a judge at chambers, the court will not entertain a motion for the same purpose, in the absence of special circumstances.*

*Pearson* moved in this case to enter up judgment on a *scire facias*, and was about to state the usual circumstances necessary to support the application, when,

The court enquired whether the application was not one which could properly be made at chambers, even in term time.

*Pearson*. It was competent for the party to apply at chambers; but there was nothing to prevent his coming to the full court in term time if he so chose.

*Per curiam*. The costs of the application to the court exceed the costs at chambers, and unless there were shewn some special circumstances for coming to the court, the party ought to be left to make his application to a judge at chambers in the ordinary way; and therefore in the present case the court will not interfere, but leave the applicant to adopt the latter mode of proceeding.

Application refused.

#### *Pinkhurst v. Sturch and three other defendants.* Hilary Term, 1848.

#### JUDGMENT AS IN CASE OF A NONSUIT.—DEATH BEFORE ISSUE JOINED.—ENTERING SUGGESTION.

*Where two out of four defendants had died before issue was joined in the action between them and the plaintiff, the other two surviving defendants, with whom issue has been joined, cannot have a judgment as in case of a nonsuit, without a suggestion first appearing in some way on the roll of the proceedings of the death of the two co-defendants.*

*Crompton* moved in this case for a rule for judgment as in case of a nonsuit. The action had been brought in 1839 against the defendants, who were four in number. Two of the defendants had since died, the one in 1843 and the other in 1845, without having either of them joined issue in the action. With respect to the two other defendants, issue had been joined on the 2nd of July, 1840, and on their behalf, it was submitted the present application ought to be granted.

*Wilde, C. J.* The record at present is against four defendants, and issue has been joined by two only, and no suggestion accounting for the reason why issue has not been joined with the other two defendants. How could you enter up a judgment as in case of a nonsuit? There appeared to be no default in the plaintiff, for he never was in a situation to proceed to trial, according to the practice of the court, and the statute gives a judgment as in case of a nonsuit where "the plaintiff shall neglect to bring the issue on to be tried according to the course and practice of the court."

*Crompton*. It was the duty of the plaintiff to enter a suggestion of the death of the two defendants, and not having done so according to the practice of the court, and issue being joined as much as it ever can be, the surviving defendants were entitled to the benefit of the statute. With the leave of the court, however, the proper suggestion might be made by the defendants, upon entering up the judgment prayed for.

*Maule, J.* When issue is joined the venire award follows, and that is the court speaking. I should have thought the proper course would be for the plaintiff to come into court and say, by way of suggestion, that two of the defendants were dead, upon the appearing of which there would be sufficient to warrant the award—



ing of the venire. Perhaps, as the plaintiff may not know that two defendants are dead, the best course would be to call upon the plaintiff by summons to bring in the roll, in order that the necessary suggestion may be entered. The practice of the court does not call upon the plaintiff to know that two of the defendants are dead.

*Crompton.* Until the *nisi prius* record is made out no roll existed; it was difficult therefore to know on what the defendants could compel a suggestion.

*Maule, J.* There is at all times either a roll or the materials for a roll.

*Wilde, C. J.* There must be a suggestion made in some way that two of the defendants are dead; and if you cannot find out the way of doing that, you are not in a situation to make the present application to the court.

Rule refused.

### Court of Eachesquer.

*Danvers v. Kitchingman.* Jan. 22, 1848.

MISDIRECTION.—SETTING ASIDE NONSUIT.—NEW TRIAL.—STATUTE OF FRAUDS.—EVIDENCE OF DELIVERY TO SATISFY.

*Where a trial takes place in Term, one day only of which is left, an application to set aside a nonsuit must be made on that day.*

*A rule moved for in court in furtherance of a judge's order, need not state it to be drawn up upon reading such order, it is sufficient if the order is attached.*

*Where A. has purchased goods in bond and refuses to allow B., of whom he purchased them, to remove them, this is, in an action by B. against A. to recover the price of such goods, prima facie evidence of a delivery and acceptance sufficient to satisfy the Statute of Frauds.*

On the 24th November, 1847, the last day but one of Michaelmas Term, this cause was tried before the Secondary of London. The declaration was for goods bargained and sold, and upon an account stated. The particulars stated the action to be brought for 10 bundles of canes, worth 10*l.* 10*s.* It was stated in evidence that the canes had not at the time of the trial been cleared from the docks, and there was no evidence of any delivery or of any delivery order. It was also in evidence, that the defendant had admitted an account in which credit was given to him for 1*l.*, and that he had refused to suffer plaintiff to remove the goods. Under these circumstances, the Secondary nonsuited the plaintiff, on the ground that there was no evidence of a delivery, or of a payment sufficient to satisfy the Statute of Frauds; reserving leave to move to set aside the nonsuit, or for a new trial. On the 29th November, the plaintiff took out a summons before Mr. Baron Alderson, at chambers, calling upon the defendant to show cause why the nonsuit should not be set aside, and a verdict entered for the plaintiff for 9*l.* 10*s.*, or a new trial had; and that in the

meantime all proceedings should be stayed. Upon cause being shown, the plaintiff obtained an order to stay all proceedings until the 2nd day of this Term, in order to give the plaintiff an opportunity of applying to the court.

*L. Temple*, on the first day of this Term, obtained a rule *nisi* to show cause why the nonsuit should not be set aside or a new trial had.

This rule was drawn up upon reading the Secondary's notes, but not upon the order of Mr. Baron Alderson. Such order was, however, together with the affidavit of service, attached to the Secondaries' notes, upon which the rule was drawn up, and was handed in with them.

*Dowdeswell* now showed cause against the rule, and stated that it was not drawn up upon the reading of the writ of trial, but he did not wish to take that technical objection. He objected that the application should have been made on the last day of last Term. The practice was well established, that although the parties have ordinarily four days to apply, yet if after the trial there is one day only left in the Term, the parties must make their application on that day, and they have not three days of the next Term for that purpose. The defendant was entitled to judgment on the day after the trial, but it being necessary to tax his costs, for which purpose one day's notice must be given, the defendant could not have his judgment on that day. It was objected before Mr. Baron Alderson, that he had no power to grant the order, because the time within which the plaintiff should have applied had expired. [*Alderson, B.* The meaning of the order is, that the proceedings were to be suspended until the 2nd day of this Term, and that the parties should then stand in the same position as at the time of making the order: that is, not that the plaintiff should have leave to move to set aside the nonsuit, the time having expired, but that he should have leave to move for a new trial.] There was also another objection, that the plaintiff had not drawn up the rule upon the reading of the order of Mr. Baron Alderson. [*Platt, B.* The order was annexed, that surely is sufficient.] He then objected, that this being an action for goods bargained and sold, and not for goods sold and delivered, and no delivery having taken place, and there being no evidence that anything had in reality ever been paid, there was, therefore, no contract binding under the Statute of Frauds, and there could not therefore be any account stated in respect of such contract. He cited *Willis v. Newham*, 3 Y. & J. 528; *Cocking v. Ward*, 15 L. J. C. P. 245.

*Per curiam.* The Secondary has made a mistake. There was evidence of an account stated, and the refusal by the defendant to suffer the plaintiff to take the goods was evidence of a delivery and an acceptance. It was for the defendant to show that there had been no delivery to satisfy the Statute of Frauds; this he failed to do. We are therefore of opinion there ought to be a new trial.

Rule absolute for a new trial.



**Court of Bankruptcy.**

*In re Brodie and Brodie.* February 3, 1848.

**BENEFIT SOCIETY.—PROOF OF DEBT.**

*To entitle a friendly society to the advantages conferred by the act 4 & 5 W. 4, c. 40, in proving against a bankrupt's estate, it must appear that the bankrupt became indebted to the society by virtue of some office or employment.*

Mr. Thompson appeared on behalf of the officers of a Friendly Society, called the "Salisbury Liberal and Constitutional Benefit Society," to prove upon the estate of Messrs. Brodie, bankers of Salisbury, for the sum of 127*l.* 12*s.* 7*d.*, and to ask the commissioner to order that amount to be paid over in full from the fund in the hands of the official assignee, pursuant to the stat. 4 & 5 Will. 4, c. 40, s. 12. That section enacts, that if any person appointed to any office in a society established under the act, having in his hands or possession by virtue of his said office or employment, any monies or effects belonging to such society, shall become bankrupt, his assignees shall pay to such person as such society shall appoint, out of the estate and effects of the bankrupt, all sums of money remaining due, which such person received by virtue of his said office or employment, before any debts of the bankrupt are paid or satisfied. Here Mr. Brodie, one of the bankrupts, was treasurer of the society, and in that right received the sum now claimed.

Mr. Commissioner *Evans*. How does this appointment as treasurer appear?

Mr. Thompson replied.—That he had an affidavit from Edward Roles, a brewer at Salisbury, who was a member of the society, stating, that he attended the first meeting of the society after its enrolment, which was in the year 1844, and that at such meeting Mr. Brodie was appointed treasurer, and continued to hold that office until the time of his bankruptcy.

Mr. Commissioner *Evans*. What does the solicitor to the fiat say to this claim?

The Solicitor to the fiat said, the only question was, whether Mr. Brodie was duly appointed the treasurer. There was no doubt he held the amount of money claimed on the part of the society at the time he became bankrupt.

Mr. Commissioner *Evans*. What does the bankrupt say?

Mr. Brodie stated, that the money was paid into the bank on account of the benefit society, but he did not remember that he was appointed treasurer.

Mr. Commissioner *Evans*. That is the whole question. The affidavit now produced is too loose and unsatisfactory. It does not appear to be made by any officer of the society, and does not show that the bankrupt was appointed at a meeting authorized to appoint a treasurer, or that he was duly appointed to that office. The solicitor for the fiat must be satisfied that the bankrupt was the treasurer of the society, lawfully appointed, and if that can be done, and the solicitor draws up an order for payment of the money, I will sanction it. In the meantime the proof must stand over.

Consideration of proof adjourned.

**ANALYTICAL DIGEST OF CASES.**

**REPORTED IN ALL THE COURTS.**

**Common Law Courts.**

**CONSTRUCTION OF STATUTES.**

**ARREST.**

1. 1 & 2 Vict. c. 110.—*Jurisdiction of court as to discharge of defendant.*—An affidavit which states only that the deponent has been informed and believes, that the defendant is about to leave England, without stating from whom the deponent obtained the information, is not sufficient ground for the defendant's arrest. Under the 6th sec. of the 1 & 2 Vict. c. 110, where a judge at chambers has ordered a defendant's arrest, the court out of which the process issues has power, on application directly made to it, to order his discharge, if it thinks the materials before the judge were insufficient, or that he exercised an improper discretion. Upon such application, the party arrested may use affidavits to explain or contradict those on which the order was granted, and those affidavits may be answered by the plaintiff on showing cause.

The defendant may also take the opinion of another judge as to the propriety of his discharge, and that opinion is in like manner subject to be reviewed by the court.

*Quære*, whether, if the judge secondly ap-

plied to should differ from the first on the same state of facts, he has power or right to order the prisoner's discharge, as upon an appeal to the court.

*Quære*, also, whether, if it appears on the fresh affidavit that the defendant was about to quit England at the time when those affidavits were made, though he was not when the order for his arrest was made, the court ought to discharge him. *Graham v. Sandrinelli*, 16 M. & W. 191; *Talbot v. Bulkeley*, ib. 193.

Case cited in the judgment: *Imlay v. Ellefsen*, 2 East, 453.

2. *Action for malicious arrest under 1 & 2 Vict. c. 110.*—The only foundation of an action for a malicious arrest, under the 1 & 2 Vict. c. 110, is, that the plaintiff has obtained the judge's order for the *capias* by *falsehood* or fraud. The declaration must therefore show that.

But, *after verdict*, a declaration was held sufficient, which alleged that the defendants, not having any reasonable or probable cause to believe that the plaintiff was about to quit England, *falsely* and maliciously, and without any reasonable or probable cause, caused and procured a judge to make an order for a *capias* against the plaintiff, and falsely, &c., by colour

of the said order, caused a *capias* to be sued out thereon, and the plaintiff to be arrested under it. *Daniels v. Fielding*, 16 M. & W. 200.

#### BRIDGE.

A borough, incorporated by charter, with a non-intromittant clause, was enlarged, under stats. 2 & 3 W. 4, c. 64, s. 35, and 5 & 6 W. 4, c. 76, s. 7, by the addition of a parish in the same county, containing a bridge, which, until that time, the county had repaired. There was no evidence that the borough had been used to maintain any bridges: *Held*, that the transfer of the new district did not render the borough liable to repair the bridge. *Reg. v. Inhabitants of New Sarum*, 7 Q. B. 941.

Cases cited in the judgment: *Rex v. West Riding of Yorkshire*, 2 East, 342, 348, 351; *Rex v. Ecclesfield*, 1 B. & Ald. 348, 355, 359; *Rex v. Inhabitants of West Riding of Yorkshire*, 4 B. & Ald. 623.

#### CHURCH.

*Limitation act.*—Where a tenant holds premises by the service of cleaning the parish church, without any pecuniary render, such service is a "rent" for which "a distress" may be made, within the meaning of the Limitation Act, 3 & 4 W. 4, c. 27, ss. 1, 8.

So the service (under the like circumstances) of ringing the church bell at stated hours from Michaelmas to Christmas. *Doe d. Edney v. Benham*; *S. C. Doe d. Edney v. Billett*, 7 Q. B. 976.

#### COGNOVIT.

1 & 2 Vict. c. 110.—*Attestation.*—The following attestation of a cognovit was held to satisfy the 1 & 2 Vict. c. 110, s. 9:—"Duly executed by the above-named R. G., in the presence of me, the undersigned S. B., attorney on behalf of the said R. G., expressly named by him and attending at his request; and I hereby declare that I subscribe my name as witness to the due execution hereof by the said R. G., and as his attorney, and that previous to the execution thereof by the said R. G., I informed him of the nature and effect thereof." Signed "S. B." &c. *Phillips v. Gibbs*, 16 M. & W. 208.

Cases cited in the judgment: *Lewis v. Lord Kensington*, 15 Law J., N.S., (C.P.), 101; *Hibbert v. Barton*, 10 M. & W. 678.

#### COSTS.

*In action upon a judgment, in what cases allowed.*—Upon moving for a rule for costs under the stat. 43 G. 3, c. 46, s. 4, in an action upon a judgment, an affidavit showing the reason for adopting that course, is indispensable. *Revell v. Wetherell*, 3 C. B. 321.

Case cited in the judgment: *Fraser v. Moses*, 4 Scott, N. R. 749; 1 Dowl. N. S. 705.

#### EXECUTION, SPEEDY.

Where a judge at *nisi prius* has granted a certificate for speedy execution, and judgment has been signed thereon, and the costs taxed; an application by the defendant for costs under

the 19th sect. of the 5 & 6 Vict. c. 122, must be made within the first four days of the ensuing term; in other cases such application must be made before final judgment.

*Quære*, whether the 19th sect. of the 5 & 6 Vict. c. 112, applies to any case except where a bond is given under the 13th sect. *Smith v. Temperley*, 4 D. & L. 510.

#### FEME COVERT.

3 & 4 W. 4, c. 74.—The court will not sanction a particular form of conveyance by a married woman, under the 3 & 4 W. 4, c. 74, s. 91. *Woodull, in re*, 3 C. B. 639.

#### FRAUDS, STATUTE OF.

1. *Railway shares.*—A contract for the sale of railway shares is not a contract for the sale of goods, wares, or merchandize, within sect. 17. *Bowlby v. Bell*, 3 C. B. 284.

2. *Earnest.*—Debt for goods sold and delivered. Pleas, never indebted and set-off. Plaintiff owed defendant a debt, and while it remained due sold him goods by sample to a larger amount, and exceeding 10*l.*, without note or memorandum in writing of the bargain for sale. Part of that bargain was, that the debt due from plaintiff was to go in part payment by defendant to him, but no actual payment of money was made by either, nor was any receipt given by defendant for plaintiff's debt to him. The goods were supplied to defendant, who returned them as inferior to sample, and the jury found that he had never accepted them. Verdict for defendant: *Held*, on motion for a new trial, that nothing had been given in earnest to bind the bargain, or in part of payment, within 29 Car. 2, c. 3, s. 17, so as to make the contract binding on the buyer. *Walker v. Nussey*, 16 M. & W. 302.

#### HIGHWAY.

1. By stat. 34 G. 3, c. 64, when the boundary of two parishes lay along the centre of a highway, justices were empowered, on information of the fact, to summon the surveyors of the respective parishes, hear the parties and their witnesses, and finally determine the matter by order, apportioning the highway between the parishes for the purpose of repair. Forms of information, summonses, and orders were given.

By an order under this act, the justices received an information laid before them, that one side of a certain highway was in, and repairable by parish H., and the other side in, and repairable by parish W., praying an apportionment; that they had summoned the surveyors, who attended, and that they had examined witnesses; and they ordered that the highway should be apportioned between H. and W., dividing it by a transverse line. The order contained no direct finding that the sides of the highway were respectively in H. and W.; but the statute form was correctly followed. On indictment for non-repair of the part allotted to H., *held*, that the justices must be taken to have considered the question, whether or not part of the highway was in H., and to have de-

cided by their order that it was; and that the fact could not be questioned on trial of an indictment, the subject-matter being within the jurisdiction of the justices, and their finding of the fact conclusive. *Reg. v. Inhabitants of Hickling*, 7 Q. B. 880.

Case cited in the judgment: *Brittain v. Kinaird*, 1 Brod. & B. 432.

2. An order directing an indictment for non-repair of a road, under stat. 5 & 6 W. 4, c. 50, ss. 94, 95, must show on the face of it that it was made at a special session for the highways, held within the division in which the road is situate. If it do not, it is void; and an order for costs made under sect. 95, by the judge who tried the cause, will be set aside. *Reg. v. Inhabitants of Hickling*, 7 Q. B. 890.

#### INSOLVENT.

1. *Effect of final order for protection, under 7 & 8 Vict., c. 96, s. 22.*—A final order, under the 7 & 8 Vict., c. 96, s. 22, for the protection of an insolvent from being taken or detained under any process, in respect of a debt included in his schedule, cannot be pleaded in bar; such order being a mere *personal* protection, and that statute containing no provision equivalent to the 10th section of the 5 & 6 Vict., c. 116. *Toomer v. Gingell*, 3 C. B. 322.

2. *Stat. 7 & 8 Vict., c. 96, s. 25, as to annuities secured by bonds, &c., not retrospective.* The provision in 7 & 8 Vict., c. 96, s. 25, that every sum of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, averment, or other securities, shall be deemed and taken to be debts within the meaning of the 5 & 6 Vict., c. 116, and of that act, is not retrospective. *Thompson v. Luck*, 3 C. B. 540.

#### JOINT-STOCK COMPANIES' REGISTRATION ACT.

*Broker and principal.—Illegal contract.*—In an action of assumpsit for money had and received, the defendant pleaded, as to 94l. 2s. 6d., parcel, &c., that, after the passing of the 7 & 8 Vict., c. 110, and after the 1st of November, 1844, the defendant, as the broker and agent of the plaintiff, sold on account of the plaintiff fifteen scrip shares in a certain joint-stock company, called the Boston, Newark, and Sheffield Railway Company, for 94l. 2s. 6d.; the formation of which company was commenced after the 1st of November, 1844, and which, at the time of such sale, was a joint-stock company within the provisions of the said act, that is to say, a partnership whereof the capital was agreed and intended to be divided into shares, &c., &c., and not being a banking company, &c., (negating the excepted cases mentioned in the enacting part of the 7 & 8 Vict., c. 110, s. 2;) and that the 94l. 2s. 6d., parcel, &c., was money received by the defendant as the proceeds of such sale: *Held*, bad, on demurrer, for not showing that the company was a railway company, the execution of whose works

could be carried into effect without the assistance of parliament, and therefore not within the provision at the end of the 7 & 8 Vict., c. 110, s. 2, which is, in legal effect, an exception.

*Semble*, that if the sale had been illegal, the broker who negotiated the sale and received the money had no right to set up the illegality of the transaction in answer to an action for money had and received, the purchaser not having insisted on such illegality. *Bousfield v. Wilson*, 16 M. & W. 185.

#### LANDLORD AND TENANT.

*Proceedings by justices to put landlord in possession, under 11 Geo. 2, c. 19.—Evidence of order.*—Proceedings of magistrates for restitution of premises, under sect. 16 of stat. 11 Geo. 2, c. 19, are, by section 17, to be revised (in England) by the judges, on circuit, &c., acting as individual justices.

*Held*, therefore, that the allegation in an indictment, that an order was made by A. and B., the justices of assize for Surrey, was not supported by a certificate of such an order signed by the deputy clerk of assize in the same way as an order of court.

*Semble*, that it is not necessary, on such indictment, to prove the proceedings before the magistrates, preliminary to the restitution; and that it is sufficient to put in the record made up by them, in which, after reciting the complaint and other proceedings, they declare that they put the complainant into possession.

*Semble*, that orders under section 17 of stat. 11 Geo. 2, c. 19, should be signed by the judges who make them. *Reg. v. Sewell*, 8 Q. B. 161.

#### LEASE.

*Agreement for lease.—Stamp.*—8 & 9 Vict., c. 106.—By 7 & 8 Vict., c. 76, s. 4, (in force from and after the 31st of December, 1844, and repealed by 8 & 9 Vict., c. 106, from the 1st of October, 1845,) it was enacted, that no lease in writing of any freehold, copyhold, or leasehold land should be valid, unless the same should be made by deed, but that any agreement in writing to let any such lands should be valid, and take effect as an agreement to execute a lease. By a document, dated the 3rd of July, 1845, and purporting to be a memorandum of agreement, (made while that section was in force,) M. agreed to let, and B., to take certain rooms in a house from the 7th of that month, for the monthly rent of 36s., to be paid every four weeks: *Held*, that it was only an agreement to execute a lease, and was well admitted in evidence as such agreement, without a stamp, being of no certain value above 1l. 16s.

*Quare*, whether, since the repeal of 7 & 8 Vict., c. 76, s. 4, by 8 & 9 Vict., c. 106, such a memorandum would require a stamp of 1l. 15s. as a lease under 55 Geo. 3, c. 184, sched. p. 1, tit. Lease. *Burton v. Reeve*, 16 M. & W. 307.

#### LECTURE-ROOM.

*Restriction on prosecution by stat. 2 & 3*

*Vict., c. 12, s. 4.—Conviction.—Award of penalty.*—Stat. 2 & 3 Vict., c. 12, s. 4, which forbids the instituting any prosecution for offences under that act, except in the name of the Attorney or Solicitor-General, applies only to offences created by the act itself, though, by section 6, it is to be construed as one act with stat. 39 Geo. 3, c. 79, which creates other offences. Where a statute gives a form of conviction, not fully describing the offence, the conviction, nevertheless, must fully describe it; but in the part which awards the penalty, it is sufficient to follow the statute form: although the enacting part of the statute gives part of the penalty to the informer, and the form is not so drawn as to show who he is. *Reg. v. Johnson*, 8 Q. B. 102.

#### LIMITATIONS, STATUTE OF.

1. *Negative pregnant.*—Trespass *quare clausum fregit*.

Plea, that the close was the freehold of H., wherefore the defendants, as the servants of H., and by his command, committed the trespasses. Replication, that defendants did not, as the servants of H., and by his command, *Id.*, that the replication was "negative pregnant," and was therefore bad on special demurrer. *Jones v. Jones*, 4 D. & L. 494.

Cases cited in the judgment: *Michael v. Myers*, 6 M. & G. 702; *Myn v. Cole*, Cro. Jac. 87; *Aubery v. James*, 1 Vent. 70.

Another plea deduced title, by an inclosure act to an allotment of land, comprising the *locus in quo*, to one T., and stated his entry and possession until just before the time when, &c., and giving colour to the plaintiff, justified the trespass as the servants of, and by the command of, T. Replication, that defendants entered and committed the trespasses after the passing of the Limitation Act (3 & 4 W. 4, c. 27), and that the entry was made for the purpose of recovering the close in which, &c., and that the right to enter did not at first accrue to T. or the defendants, or any person through whom they claimed, at any time within twenty years before making that entry: *Held*, on special demurrer, that the replication was good, it being sufficient for the plaintiff to bring the case within the second section of the statute, and if the defendants relied upon any subsequent clause as preventing the right of entry from being barred, that matter should come from them by way of rejoinder. *Jones v. Jones*, 4 D. & L. 494.

2. *Banker and customer.*—Money deposited with a banker by his customer in the ordinary way is money lent to the banker, with a superadded obligation that it is to be paid when called for by cheque; and consequently, if it remain in the banker's hands for six years, without any payment by him of the principal or allowance of interest, the Statute of Limitations is a bar to its recovery (*dubitante Pollock*, C. B.) An administration by a bankrupt in his balance-sheet will not take a debt out of the Statute of Limitations as against his assignees.

An administration in an unsigned letter, written and sent by direction of the assignees of a bankrupt, by an accountant employed by them to wind up the affairs of the bankrupt estate, will not take a debt of the bankrupt out of the Statute of Limitations. *Pott v. Clegg*, 16 M. & W. 321.

See *Church*.

#### LOCAL ACT.

*Negligence.—Commissioners' clerk.*—By a local act, (3 & 4 Vict., c. lv,) commissioners were appointed for improving a navigation; all their powers to be executed by the majority present at a meeting of not fewer than three. They were not to be personally liable on contracts made, or for damages incurred in relation to any thing done in pursuance of the act, but might be sued in the name of their clerk. The commissioners, at a meeting duly held, (November 12,) resolved to accept a tender for executing works in pursuance of the act; their clerk thereupon drew up a contract according to the tender; and it was afterwards (December 4) signed by the contractor. It purported to be made by A., B., and C., being three of the commissioners appointed for putting the act in execution, and recited the previous resolution; but it did not appear (unless as before mentioned) that the contract was executed or sanctioned by the majority of a regular meeting.

*Held*, that the contract, made in consequence of the above resolution, was a contract entered into by the commissioners in execution of their office.

And that they were liable, and might be sued in the name of their clerk, for damage negligently done by the contractor to third persons in execution of such contract.

The contractor, in executing part of the work contracted for, (the diversion of a creek,) made a drain, which, from a defect in the materials, could not resist water; and, without having any authority to do so, he turned in the water, which broke through and flooded the neighbouring land. The drain was not finished at the time; but it did not appear that anything further was about to be done for the purpose of securing it, if the mischief had not happened.

In an action on the case against the commissioners, (sued by their clerk,) a declaration stating that they made the diversion and executed the works so negligently that, in consequence thereof, and from no other cause, the water broke through and flooded plaintiff's land.

*Held* that, on the facts above stated, defendant was not liable. *Allen v. Hayward*, 7 Q. B. 960.

Cases cited in the judgment: *Laugher v. Pointer*, 5 B. & C. 547; *Randleson v. Murray*, 8 A. & E. 109; *Quarman v. Burnett*, 6 M. & W. 499; *Milligan v. Wedge*, 12 A. & E. 737; *Rapson v. Cubitt*, 9 M. & W. 710.

#### RAILWAY.

1. *Acts done in pursuance of a statute.—Obstruction.*—A railway company was em-

powered by statute to divert a canal, and it was enacted that, if by any accident, or in the execution of any works authorized by the act, (otherwise than from the neglect or mismanagement of the railway company,) or by reason of the bad state of repair of the railway company's works, the canal should be so obstructed that boats could not pass, the railway company should pay the canal company, by way of ascertained damages, 10*l.* at least for every hour during which the obstruction should continue; and if it should continue beyond seventy-two consecutive hours, or should have been occasioned by any wilful act of the railway company, then at 20*l.* per hour at least by way of ascertained damages. And that, in default of payment on demand made on the railway company's treasurer, &c., the canal company might recover the sum by action of debt or on the case. But this clause was not to prevent their recovering special damage in respect of injuries by machines or engines on the railway, or of the acts or defaults of the railway company, in respect of which the lowest amount of liquidated damages was ascertained as aforesaid, though the special damage might exceed the liquidated damages; but, if such liquidated damages should have been paid, and any action for special damage should be brought, credit was to be given therein for such payment.

It was also enacted that no action should be brought for anything done or omitted to be done in pursuance of this act, or in the execution of the powers or authorities given by it, without 20 days' notice, nor unless the action should be brought within six calendar months next after the act committed, or, in case there should be a continuation of damage, then within six calendar months next after the doing such damage should have ceased.

*Held*, that an action of debt for liquidated damages incurred by obstructing the canal, was an action for something done in pursuance of the act; and that the limitation clause applied.

The declaration stating that the canal, by means of the defendant's works, became obstructed on a certain day, and continued so obstructed for 99 hours next following, and that defendants refused payment when demanded: *Held*, that the time of limitation ran from the last obstruction, and not from the demand of payment. *Kennet and Avon Canal Company v. Great Western Railway Company*, 7 Q. B. 824.

2. *Interest, when recoverable as damages.*—The Great Western Railway Company granted to the plaintiffs debenture bonds in the following forms:—"By virtue of an act passed, &c., we, the Great Western Railway Company, in consideration of 1,000*l.* to us paid by T. P. and W. G., do assign to the said T. P. and W. G. the said undertaking, and all future calls, and all the estate, right, title, and interest of the said company in and to the same, to hold unto the said T. P. and W. G., until the said

sum of 1,000*l.*, together with all interest for the same after the rate of 5*l.* per cent., payable as hereinafter mentioned, shall be fully paid and satisfied; and it is hereby stipulated that the said principal sum of 1,000*l.* shall be repayable and repaid on the 15th of January, 1844, and that in the meantime the said company shall, in respect of interest as aforesaid on the said principal sum, pay to the bearer of the coupons or interest warrants the several sums mentioned in such warrants respectively, at the times specified therein."

In January, 1844, the previous interest having been duly paid, the last of the coupons or interest warrants was presented, and the interest paid to the plaintiffs; but the company did not then pay the principal, or give notice to the plaintiffs that they were ready to pay it: *Held*, that the plaintiffs were entitled, in an action of covenant, to recover interest from the 15th January, 1844, to the time of the payment of the principal. *Price v. Great Western Railway Company*, 16 M. & W. 244.

Cases cited in the judgment: *Dickenson v. Harrison*, 4 Price, 282; *Watkins v. Morgan*, 6 C. & P. 661.

3. *Imprisonment for non-payment of fare.*—By 5 W. 4, c. x., (local), the London and Croydon Railway Company was incorporated. By sec. 106, they were authorized to make bye-laws for the good government of their affairs, for regulating their proceedings, and for the management of the undertaking, and of the officers and servants of the company in all respects, "and to impose and inflict such reasonable fines and forfeitures upon all persons offending against the same as to the said company shall seem meet, not exceeding the sum of 5*l.* for each offence;" such bye-law to be binding upon and be observed by all parties," provided they were not repugnant to the laws of England, or the directions of the act. By sec. 148, the company were empowered to make orders for regulating the travelling upon and use of the railway, and for or relating to travellers passing thereon; such orders and regulations to be binding upon such travellers, on pain of forfeiting a sum not exceeding 5*l.*, which the company shall attach to a default. By sec. 163, penalties and forfeitures imposed by the act, or by any bye-law, order, or rule made in pursuance thereof, might be recovered in a summary way by adjudication of justices, one-half the penalty to go to the informer, and the other half to the company. By sec. 165, any officer or agent of the company may seize and detain any person whose name and residence should be unknown to such officer or agent who shall commit any offence against the act, and may convey him, &c. before a justice without any warrant or other authority than that act. The company made a bye-law, under their common seal, by which each passenger, not producing or delivering up his ticket on leaving the company's premises, was required to pay the fare from the place whence the train originally started: *Held*, that this was not a

bye-law imposing a "penalty or forfeiture;" so that the non-production of a ticket on leaving the company's premises, and the refusal to pay the fare from the place from which the train originally started, did not authorize the arrest of the passenger.

*Semble*, the only power to apprehend given by sec. 165, is for an offence against the act itself.

*Quære*, whether the bye-law was reasonable. *Chilton v. London and Croydon Railway Company*, 16 M. & W. 212.

4. *Notice of action. — Costs. — Taxation.* — The Great Western Railway Company is bound by its acts of parliament to charge all persons sending goods by it at equal rates. In assumption for money had and received, to recover the difference between the sums charged the plaintiff and those charged by the company to other persons for the conveyance of goods, it was held, that the charges so made must be considered as something *done* under the act by which they were incorporated, and consequently that under sect. 223, they were entitled to notice of action; and therefore, that the Master was right in allowing the plaintiff the costs of a notice of action.

The court refused, on a motion to review the taxation, to entertain an objection to the amount of the costs of the notice of action so allowed, as that objection had not been taken before the Master. *Kent v. The Great Western Railway Company*, 4 D. & L. 481.

See *Statute of Frauds*.

#### REQUESTS, COURT OF.

*Affidavit. — Suggestion.* — An affidavit in support of an application to enter a suggestion under the 23 G. 2, c. 33, (The Middlesex Court of Requests Act,) described the defendant as of "No. 51, Bedford Row, Holborn, in the county of Middlesex," and further stated, that "before and at the commencement of this suit, he was, and ever since hath been, and still is, inhabiting and resident in Bedford Row aforesaid; and that for and during all that time he was, and still is, liable to be summoned to the Court of Requests, held at Kingsgate Street, Holborn, aforesaid; and that the cause of the above action, and every part thereof, arose within the jurisdiction of the said court: Held, that the affidavit was insufficient, as it did not show that the whole of Bedford Row was in the county of Middlesex; and that the court could not take judicial notice that the Court of Requests for Middlesex was held in Kingsgate Street. *Thorne v. Jackson*, 4 D. & L. 478.

Case cited in the judgment: *Rex v. Burridge*, 3 P. Wms. 496, 497.

#### SALE.

13 Eliz. c. 5. — A sale of property for good consideration is not, either at common law or under stat. 13 Eliz. c. 5, fraudulent and void, merely because it is made with the intention to defeat the expected execution of a judgment creditor. *Wood v. Dixie*, 7 Q. B. 892.

#### SENTENCE OF IMPRISONMENT.

11 G. 4, and W. 4, c. 70. — *Semble*, that under stat. 11 G. 4, and 1 W. 4, c. 70, a sentence that defendant be imprisoned for a term commencing from the time when he shall be actually taken into custody, is correct.

*Quære*, whether in such sentence it be necessary to use the words "It is considered."

Judgment being reversed, defendant, K., who was still under imprisonment, was discharged by order (in vacation) of a judge of the Court of Queen's Bench, sitting at chambers. *Reg. v. King*, 7 Q. B. 782.

#### STAMP.

See *Lease*.

#### TOLLS.

1. *General Turnpike Act*, 3 G. 4, c. 126. — *Letting agreement.* — In an action for rent payable under an agreement with trustees of turnpike roads, demising tolls and toll-houses, the declaration need not show that the forms required by stat. 3 G. 4, c. 126, s. 55, were observed in the letting.

It is sufficient if the count states that, at a meeting of the trustees, held at, &c., the tolls, &c., were put up to be let by auction under certain conditions, &c., at which meeting A. B. was the last and highest bidder, and thereupon, by a memorandum of agreement, &c., it was witnessed, &c.; mutual promises, and entry of defendant.

In an action on such agreement, if the instrument be produced, stating that the trustees have contracted, &c., with the lessee, "witness the hands of C. and D., two of the trustees," &c., and the signatures of defendant, and of C. and D. be proved, such instrument is evidence against the defendant that C. and D. were trustees, and will support a verdict against him in an action at their suit as trustees, though there be no other proof that they were so. *Willington v. Browne*, 8 Q. B. 169.

2. *Commitment aided by conviction.* — *Form of conviction under stat. 4 G. 4, c. 95, s. 30. — Protection of magistrate under 3 G. 4, c. 126, s. 147.* — Stat. 4 G. 4, c. 95, s. 30, enacts, that if any collector of tolls "shall demand and take a greater or less toll from any person than he shall be authorised to do by virtue of the powers of any act, or of the orders and resolutions of the trustees or commissioners, made in pursuance thereof," he shall be liable to a penalty, which is made recoverable by conviction before justices, and distress, and imprisonment in default of sufficient distress.

A conviction stated, that a collector "did demand and take" from J. L., at a gate on a turnpike road, "a certain toll, to wit, the toll or sum of 4d., as and for a toll then and there payable by the said J. L., at such gate, for a certain horse then and there drawing a certain cart upon two wheels only, and which said cart was then and there drawn by such one horse only, and driven by him, the said J. L., in, along, and over the said turnpike road; and for which said horse, drawing such cart, a cer-

tain toll, to wit, the sum of 6d., was then and there payable by the said J. L., the said toll or sum of 4d., so demanded and taken by the said "collector," as aforesaid, then and there being a less toll than he was then and there authorised to take for the cause aforesaid, by virtue of the powers of any act, or of the orders and resolutions of the trustees or commissioners of the said turnpike road, made in pursuance thereof, contrary to the form of the statute," &c.

*Held*, a sufficient conviction, though no provisions of any particular turnpike act, or orders or resolutions of trustees, or commissioners, were set forth or referred to.

A warrant of commitment on this conviction, for want of sufficient distress, stated that the collector was convicted, for that he "did suffer and permit J. L. to pass through" the turnpike gate, "with a cart drawn by one horse, on payment of the sum of 4d., as toll for the said cart drawn by one horse, the legal toll due and payable in respect of the said cart drawn by one horse being the sum of 6d., contrary to the statute," &c.

*Semble*, that the warrant gave a sufficient description of the offence under the statute. But *held*, that supposing it insufficient, the conviction would cure the defect. See section 147 of stat. 3 G. 4, c. 126, enacts, "that if any

action or suit shall be commenced against any person or persons for any thing done in pursuance of this act;" "if the matter or thing complained of shall appear to have been done under the authority and in execution of this act," "the jury shall find for the defendant."

*Quere*, whether justices committing by virtue of this act, and sued in trespass, be entitled to a verdict on the ground only, that they *bond fide* believed themselves to be putting the act in execution. *Stamp v. Sweetland*, 8 Q. B. 13.

## WITNESS.

*Competency of, under stat. 6 & 7 Vict. c. 85.*—A witness called for the plaintiff stated, on the *voir dire*, that he had introduced the owner to the broker; that he had nothing to do with the negotiation, and had no claim on the owner; but that he expected, pursuant to arrangement, and to the custom amongst brokers, to receive half the amount of the commission the plaintiff might recover in this action: *Held*, that the witness was not a necessary or proper party to be made a co-plaintiff, nor a person "in whose immediate or individual behalf" the action was brought, either wholly or in part, within the proviso in the 6 & 7 Vict. c. 85, and consequently that he was made a competent witness by that statute. *Hill v. Kitching*, 3 C. B. 299.

## BUSINESS OF THE COURTS.

## CHANCERY CAUSE LIST.

After Hilary Term, 1848.

AT LINCOLN'S INN.

Lord Chancellor.

## APPEALS.

|               |                 |                      |                 |
|---------------|-----------------|----------------------|-----------------|
|               | { Sharp         | Taylor               | { appeal        |
|               | { Ditto         | Ditto                | {               |
| To fix a day. | { Lancashire    | Lancashire,          | ditto           |
| S. O.         | { Hodgkinson    | Hodgkinson           | { appeal        |
|               | { Ditto         | Jackson              | {               |
|               | { Allfrey       | Allfrey,             | ditto           |
| S. O.         | { Wilson        | Wilson               | {               |
|               | { Ditto         | Ditto                | { appeal        |
|               | { Ditto         | Foster               | {               |
|               | { Nightingale   | Goulbarn             | { ditto pt. hd. |
|               | { Whittington   | Nightingale          | {               |
|               | { Williams      | Edwards              | { appeal        |
|               | { Soden         | Ditto                | {               |
|               | { Westby        | Westby               | { ditto         |
|               | { Ditto         | Ditto                | { ditto         |
|               | { Ditto         | Ditto                | { ditto         |
|               | { Cridland      | Ld. Mawbey, do.      |                 |
|               | { Fraser        | Jones                | ditto           |
|               | { Cunninghamham | Murray               |                 |
|               | { Ditto         | Hay                  | { ditto         |
|               | { Ditto         | Murray               | {               |
|               | { Lawrence      | Ditto                | {               |
|               | { Maxwell       | Kibblethwaite,       | appeal          |
|               | { Ditto         | Ditto                | ditto           |
|               | { Boyd          | Boyd                 | ditto           |
|               | { Watts         | Hyde, cause by order |                 |
|               | { Gough         | Bult,                | ditto           |

Attorney-Gen. Gibbs, ditto  
Roberts Roberts ditto  
In re Ludlow  
Charities By order.

## Vice-Chancellor of England.

## PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Harris v. Brunton, plea.  
S. O. C., Myers v. Macdonald, 2 causes.  
{ Wastell v. Leslie, fur. dirs. and exns. pt. hd.  
{ Bird v. Ford, cause by order.  
Steward v. Forbes, pt. hd.  
Hickson v. Mainwaring, 2 causes.  
Flint v. Warren, fur. dirs. and petn., pt. hd.  
Johnstone v. Ure.  
Stiles v. Guy, exons, 2 sets, and fur. dirs. pt. hd.  
To fix a day, Chambers v. Siggers.  
Milford v. Reynolds, fur. dirs. & costs & 2 petns.  
Forbes v. Herring.  
Knott v. Prier.  
Knott v. Cottee.  
Moyle v. Borlase.  
Low v. Graves.  
Bromley v. Loton.  
Bownass v. Abbott.  
{ Hammett v. Turner, fur. dirs. and costs.  
{ Ditto v. Ditto, suppl. bill.  
{ Lasbrooke v. Smith {  
{ Browne v. Ditto {  
Gilbert v. Hodgkiss  
Lewis v. Smith.  
Robinson v. Robinson.  
Sowerby v. Gutteridge.

{ Payne v. Wrench }  
 { Milburn v. Woodcock } fur. dirs. and costs.  
 { Ditto v. Baker }  
 Hobbhouse v. Bland.  
 { Player v. Watson } fur. dirs. and costs.  
 { Williams v. Ditto }  
 Rackham v. Siddall.  
 Chownes v. Sharpe, fur. dirs. and costs.  
 Jones v. Foulkes ditto  
 Agnew v. Fielder.  
 Earl of Balcarras v. Johnson, exons.  
 Duke of Leeds v. Earl of Amherst, exons.  
 Battershall v. Bishop of Winchester, fur. dirs.  
 and costs  
 Short, Cockerell v. Calvert.  
 Miles v. Fav, fur. dirs. and costs.  
 Surtees v. Hopkinson, exons.  
 Jenkins v. Briant, fur. dirs. and costs.  
 Ashburnham v. Ashburnham, fur. dirs.  
 Adey v. Arnold, fur. dirs.  
 Roberts v. Roberts.  
 Green v. Norton, 5 causes, fur. dirs. and costs.  
 Green v. Bourke.  
 Cocking v. Briggs.  
 Palmer v. White.  
 Jones v. Evans.  
 Salomons v. Connop.  
 Sturges v. Arrowsmith.  
 Jones v. Walker.  
 Jones v. Jones.  
 Bourke v. Green.  
 Pemberton v. Wilcocks.  
 Dobson v. Lyall, fur. dirs. and costs.  
 Stevens v. Stevens, ditto.  
 Dunn v. Holbrook ditto.  
 Greenwood v. Groom.  
 Westbrook v. Knight.  
 Swift v. Whitmore.  
 Johnson v. Tucker.  
 Pocock v. Johnson, fur. dirs. and costs.  
 Rainbow v. Moss.  
 Vulliamy v. Vulliamy.  
 Pawsey v. Hale, exons.  
 Jowett v. Board, fur. dirs. and costs.  
 Short, Kempton v. Davidson.  
 Skarf v. Soulby.  
 Short, Davidson v. Kempton.  
 Cook v. Fynney, fur. dirs. and costs.  
 Short, Wooliscroft v. Slack ditto.  
 Short, Cumming v. Holroyd.  
 Short, Rouse v. Thorley.  
 Parkin v. Sanderson.  
 Short, Paterson v. Gurney.

### Vice-Chancellor Knight Bruce.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

S. O. Schofield v. Calhuac.  
 S. O. { Parker v. Constable.  
 { Ditto v. Sturges.  
 East, T., Ball v. Bonfield.  
 Robinson v. Bell.  
 Fleming v. Carlyle.  
 S. O., Hall v. Lack, fur. dirs. and costs.  
 { Lyall v. Elias }  
 { Elias v. Lyall }  
 Trinity T., Barton v. Haynes.  
 10 Feb. { Att.-General v. Munro. }  
 { Ditto v. Bannerman. }  
 { Ditto v. Mackant }  
 18th Feb., Scawin v. Burton  
 10th Feb., Clark v. Bates.  
 11th Feb., Trasler v. Purser.

12th Feb., Graham v. Needham.  
 14th Feb., Firmin v. Fulham.  
 15th Feb., Fairbrother v. Mason, fur. dirs. and costs.  
 26th Feb., Bayley v. Cooper.  
 17th Feb., Satterthwaite v. French.  
 11th Feb., Henniker v. Heaniker.  
 Good v. Parry.  
 Platt v. Buckley.  
 Phelps v. Prothero.  
 Baker v. Hardley.  
 Scott v. Story, exons.  
 Cumberlege v. Cumberlege, fur. dirs. and costs.  
 8th Feb., Smith v. Short, re-hg.  
 26th Feb., James v. Talbot.  
 Short, Prentice v. Tabor.  
 29th Feb., Willis v. Braddon.  
 Hoggart v. The Croydon Canal Co., fur. dirs. and costs.  
 29th Feb., Twyford v. Brownrigg.  
 1st March, Parker v. Kirk.  
 Smith v. Evans.  
 8th Feb., Aglionby v. James.  
 3rd March, Gilbert v. Challoner.

### Vice-Chancellor Cairn.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

To fix { Moor v. Vardon, }  
 a day { Ditto v. Lachlan. }  
 16th Feb., Clementi v. Fielding.  
 To fix a day, Gaskell v. Holmes, fur. dirs. and costs.  
 Batchelor v. Middleton.  
 Morrison v. Morrison, exons.  
 S. O., Wheeldon v. Perkin.  
 Sayer v. Sayer, exons. and fur. dirs.  
 3th Feb., Sowerby v. Clayton, ditto.  
 Scarborough v. Pinsent.  
 Plews v. Middleton.  
 George v. Harding.  
 Baring v. Kemp, 2 causes.  
 14th Feb., Rowland v. Morgan.  
 Blackman v. Light.  
 Maddison v. Chappell, 3 causes.  
 Moseley v. Baker.  
 Sandys v. Moylan, 2 causes.  
 Rooke v. Drake.  
 Mores v. Mores.  
 Chambers v. Earl of Mornington.  
 Stutter v. Muston, 4 causes.  
 S. O., Viscount St. Vincent v. Hinckley.  
 Kipling v. Fry.  
 { Toft v. Stevenson }  
 { Graham v. Reeves }  
 { Chandler v. Brittain } fur. dirs. and  
 { Ditto v. Shepherd } costs.  
 Stevens v. Pillin, ditto.  
 Downs v. Collius, 2 causes.  
 { Fitch v. Webber } fur. dirs. and  
 { Ditto v. Christian } costs.  
 Smith v. Harwood.  
 { Parks v. Odell } fur. dirs. and  
 { Ditto v. Chessum } costs.  
 28th Feb. { Heyne v. Tyler }  
 { Ditto v. Bird } 2 causes.  
 { Linton v. Curry, fur. dirs. and costs.  
 { Ditto v. Ditto, cause.  
 { Yorke v. Pole } fur. dirs. and  
 { Ditto v. Collins } costs.  
 Mortimer v. Ireland ditto.  
 Boag v. Robinson ditto.



# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 19, 1848.

*‘ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’*

HORAT.

### FEES AND SALARIES IN THE COUNTY COURTS.

NOTHING seems to have been determined by the government in respect of the County Courts Act. The Secretary of State for the Home Department stated, in the House of Commons, in answer to a question put to him by Dr. Bowring, that the subject of an alteration of the fees now taken in those courts was under consideration, and that he hoped ere long a revision would take place. The salaries of the judges and other officers connected with the new courts, form also a subject, upon which those in authority would appear not to have been able very readily to come to a determination. Notice was given sometime about the 1st October last, that the payment by fees was to cease on that day, and that the judges and officers of the County Courts were to be remunerated thereafter by fixed stipends; and it was further intimated that the amount of salaries to be substituted for the fees received by the officers respectively would be speedily settled and communicated. Subsequently, another circular was received, informing the judges and officers that they were to continue to receive the fees payable under the act until the last day of December, 1847, and that, after that date, they were to be paid by salaries.

We have not learned that any communication has since been made upon the subject of salaries, and, therefore, the functionaries connected with the new courts are in a state of uncertainty upon this subject, respecting which there seems no reason why any hesi-

tation or uncertainty should exist. The fees taken from suitors in the County Courts, and the salaries of the judges and officers, are matters with which the government are authorised to deal, without going to parliament, although the discretion vested in her Majesty's advisers is limited as to the salaries,—the maximum salaries they are empowered to grant being 1,200*l.* per annum to the judges, and 600*l.* to the clerks. We should not be surprised if it turns out, that the delay which has taken place in fixing the salaries is to be ascribed to the doubts entertained, whether the salaries that can be granted under the 40th section of the County Courts Act, afford an adequate compensation for the duties which the judges and officers of the County Courts have been called upon to perform, increased as those duties are by the recent addition of the jurisdiction in matters of insolvency. Practically, it is found that they are one and all fully and exclusively occupied in the business of the County Courts. We believe, there are only two instances, in which those gentlemen who have accepted appointments as judges of the County Courts, profess to avail themselves of the permission which the act gives them to continue to practise as counsel. Indeed, it is obvious that the performance of duties requiring attendance from 15 to 20 days in every month, can never be compatible with an extensive general practice. Considering the extent and importance of the duties imposed on the officers of the County Courts, the question is, whether the maximum salaries fixed by the act are sufficient.

The great majority of the cases dis-

posed of in the County Courts, unquestionably are of the same class which formerly came before the Courts of Request. They do not call for the exercise of any very high degree of legal acquirement, but they require temper, patience, and attention. There is another class of cases occasionally brought under the consideration of the judges of the County Courts, frequently involving nice and difficult questions of law, and requiring the exercise of the highest judicial qualities, accompanied by the power of readily investigating, marshalling, and applying facts, and deciding upon conflicting testimony. A judge of a County Court, to perform his duty satisfactorily, must be capable of great drudgery, as well as competent in other respects. If such a man has been found to accept the situation, and is willing to retain it, few will think him overpaid with a salary of 1,200*l.* a year.

Our apprehension is, that now, when the extent and nature of the duties to be performed are ascertained, and it is found how little that is desirable beyond the emolument attaches to the office, very few of the County Court judges, in whose capacity the public feel confidence, will retain the office with satisfaction after the salary has been fixed. As already stated, the emoluments, received by the judges and officers of many of the courts from fees, double—and in some instances, treble—the highest salaries they could be entitled to receive under the act of parliament. It would not be reasonable to expect any class of persons—professional or unprofessional—to be particularly gratified by a considerable reduction of income. We understand the judges and other officials of the County Courts are extremely dissatisfied with the proposed change. Whenever it takes place, the result, we have no doubt, will be perceptible in the mode in which business is conducted before the new tribunals. The work will be got through, we dare say, but we shall be much surprised if it be not soon discovered that the number of workmen must be increased; for already it is more than insinuated that the new judges are overworked.

If those in authority conceive, that experience justifies them in going to parliament for power to fix the salaries of the judges and officers of the County Courts at larger amounts than they are empowered to do under the existing law, other provisions of the County Courts Act will come under consideration, and the notice of the legislature must be drawn to the total inadequacy

of the fees allowed by the act to professional men, and to some other of the glaring defects which its operation has exposed. We propose again to direct attention at an early opportunity to some of the more prominent defects, upon which numerous complaints have reached us.

## TAXES ON THE ADMINISTRATION OF JUSTICE.

### COURT OF CHANCERY.

THE Accountant-General's Annual Account has just been printed, showing the expenditure for the Judges, Officers, and Clerks of the Court of Chancery,—all or nearly all of which ought to be borne by the public at large. It will be observed that upwards of 70,000*l.* a year is drawn from the Suitors' Fund, and upwards of 137,000*l.* a year from the Fee Fund:—the latter sum must, in the first instance, be advanced by the solicitors of the court, a large part of which is lost,—and another large part barely refunded without interest or profit.

#### Out of the Suitors' Fund:—

|   | £              | s.        | d.       |
|---|----------------|-----------|----------|
| To the Judges . . . .                                     | 19,489         | 11        | 8        |
| Masters . . . . .   | 26,689         | 10        | 4        |
| Accountant-Gen. and Clerks . . . .                        | 8,127          | 12        | 2        |
| Examiners . . . . .                                       | 877            | 5         | 6        |
| Clerk of Affidavits . . . . .                             | 291            | 5         | 6        |
| Clerks of Entries . . . . .                               | 365            | 7         | 7        |
| Ushers, &c. of the Courts . . . .                         | 3,602          | 17        | 11       |
| Compensation to Exchequer Officers . . . . .              | 5,876          | 8         | 11       |
| Solicitor to Suitors' Fund . . . .                        | 645            | 18        | 5        |
| Surveyor and Expenses of the Courts, Offices, &c. . . . . | 4,394          | 12        | 7        |
| <b>Total payments . . . . .</b>                           | <b>70,360</b>  | <b>10</b> | <b>7</b> |
| <b>Surplus interest invested . . . .</b>                  | <b>30,000</b>  | <b>0</b>  | <b>0</b> |
|   | <b>100,360</b> | <b>10</b> | <b>7</b> |

The following are the payments made out of the *Fee Fund*:—

|  | £              | s.        | d.        |
|--|----------------|-----------|-----------|
| Compensation to Masters and Salaries to Clerks . . . . .       | 16,128         | 18        | 8         |
| Salaries and Compensations to Registrars and Clerks . . . . .  | 26,774         | 1         | 8         |
| Report Office . . . . .  | 6,150          | 0         | 0         |
| Examiners . . . . .  | 2,100          | 0         | 0         |
| Affidavit Office Clerks . . . . .                              | 487            | 10        | 0         |
| Masters in Lunacy, Clerks, &c. . . .                           | 10,293         | 11        | 6         |
| Taxing Masters, Clerks of Records and Writs, Clerks, &c. . . . | 33,171         | 17        | 8         |
| Compensation to Six Clerks, Sworn Clerks, &c. . . . .          | 41,000         | 2         | 2         |
| <b>Excess of Fees above Charges . . .</b>                      | <b>1,187</b>   | <b>15</b> | <b>11</b> |
|  | <b>137,293</b> | <b>17</b> | <b>7</b>  |

|                                  |         |      |
|----------------------------------|---------|------|
| Total payments out of Suitors' £ | s.      | d.   |
| Fund . . . . .                   | 70,360  | 10 7 |
| Fee Fund . . . . .               | 137,293 | 17 7 |
|                                  | 207,654 | 8 2  |

Surely something will soon be effectually done to stop demands on the Suitors which operate in a multitude of cases, as an entire denial of Justice.

## NOTICES OF NEW BOOKS.

*A Treatise on the Law of Copyright in Books, Dramatic and Musical Compositions, Letters and other Manuscripts, Engravings and Sculpture, as enacted and administered in England and America; with some Notices of the History of Literary Property.* By GEORGE TICKNOR CURTIS, Counsellor-at-Law. London: A. Maxwell & Son. 1847. Pp. 450.

THIS is an able work on the Law of Copyright, by Mr. Curtis, an American 'Counsellor-at-Law,' and we are bound to give it an early notice. It treats as well of English as of American Copyright. The author has not followed the usual course of stating preliminarily the contents of his work. We must therefore supply this omission. The Introduction treats of the Theory of the Rights of Authors, and then comes the History of Literary Property. The second chapter enters on the subjects of Literary Property, before and after publication; Manuscripts; Letters; Lectures; Dramatic Compositions; Books; Music; Periodical Publications; Engravings, Maps, and Charts; Sculpture; Prerogative Copies; Reports of Judicial Proceedings. 3rdly, Mr. Curtis next treats of the persons entitled to the protection of the statutes. The 4th chapter relates to the character of the work claiming protection; and in the 5th is discussed the degree of originality necessary to a valid copyright. Next comes, 6thly, a disquisition on the statutory requisites for a valid copyright in the United States and in Great Britain. 7thly, The Duration of Copyright in England and in the United States. 8thly, The Transmission of Copyright, and other incidents of Literary Property. 9thly, The Infringement of Copyright. And 10thly, Of the Remedy for an Infringement of Copyright; with an Appendix of Statutes both in England and America.

Mr. Curtis has not contented himself with a dry statement of the law as it is, but

has given an historical view of the subject, and discussed the principles on which several of the most important decisions are founded.

"Writers of treatises, (he says,) in the manner of the English bar, generally content themselves with a dry abstract of the decisions, showing barely what the law is. This is well, as far as it goes. It is not the province of any writer to make the law, and he must certainly state the law as it is, if he means to have his book respectable and respected. But while his text should exhibit clearly the actual state of the law, he should never forget that he is dealing with principles; that it is his task, to exhibit the doctrine of the law, which is its life; and that unless he does this, his work, however accurately he may have strung the cases together, will be a mere collection of husks, the shell without the generating principle that lies wrapt in the meat. If, then, he essays the task of eliminating the principle of a rule or a decision, tracing it in all its bearings and following it by the thread of analogy into other systems of jurisprudence, in order to ascertain whether it be really part of the general science, and not a local idea, he cannot avoid the expression of his own opinion, to some extent. The study of the law is the pursuit of truth; and he who undertakes to express and embody such truth, must occasionally express his own convictions.

"His allegiance to the science which he serves, requires him to examine critically every recorded precedent, and to dissent, if dissent be needful; not as if he were ambitious to be regarded as an authority; but in the way of suggesting to those whose high functions it is to revise and declare the law, the means of arriving at more correct results."

Thus, Mr. Curtis much disputes the soundness of the decisions which establish not only the right to publish *bonâ fide* abridgments of original works, but even to confer a copyright on such abridgments, and to restrict others from pirating those abridgments.

Our readers are, no doubt, aware of the history of the Law of Copyright in England; of its recognition as a *perpetual* common law right both in courts of law and equity, before it was "incumbered with the help" of the act of Anne, which limited that right to 14 years, and of the extension of the statutory term of its duration from 14 to 28 years, and finally by the judicious and untiring exertions and splendid eloquence of Mr. Serjeant Talfourd, to 42 years.

However we may deplore or condemn the injustice and impolicy of our own legislative provisions, we cannot envy the state of the Law of Literary Property in that great land

of liberty—the United States of America. The honest and rational principles of our common law are indeed held to have been transported on this, as on other branches of jurisprudence, to the other side of the Atlantic, but there they were subjected to a fate much akin to that which was inflicted by the statute of Anne in England. That wonderful document which comprises “*the constitution*” of the United States, whilst it is said eternally to forbid the alteration of the law of slavery, also forms an insuperable barrier to the granting of the common mode of justice to the authors of literary works.

Let, however, Mr. Curtis give his own account of the origin and progress of the Law of Copyright in that country.

“In America, since the adoption of the constitution of the United States, the protection of literary property depends upon the laws passed by congress pursuant to the power granted in that instrument. Whether there was any common law right of authors, in published works, in any of the states of this Union, before the adoption of the constitution, is a question not free from difficulty.

“The fundamental principle of American law, in relation to common law rights, is, that the colonists brought with them into each colony all the body of the common law of England which was applicable to their situation, or, as it is sometimes said, which was suited to their circumstances and condition. The existence of a common law right of authors, in any one of the American colonies, depends, of course, upon its existence in England, when the colony was settled, and also upon the fact of its having been brought by the colonists, as part of the body of the common law, not unsuited to their circumstances and condition. That this was the case, seems to have been denied by a majority of the supreme court of the United States, the question having arisen, whether there was any copyright at common law, in relation to printed books, in the state of Pennsylvania.

“We have seen, if the historical account given in the foregoing pages be correct, that the position cannot be maintained, that there existed in England no common law right of authors, previous to the settlement of the American colonies. It is clear, that there was such a thing as literary property in England, before the reign of Queen Anne; and it is equally clear that in the years 1769 and 1774, in the cases of *Miller v. Taylor*, and *Donaldson v. Becket*, this property was ascertained and declared to have been a right at common law, and consequently it must have existed ever since the introduction of printing into England. The last of these cases, if the answers of the judges are the proper *criteria* of the decision, decides only that the common law right had been taken away by the statute of Anne.

“How far this portion of the common law

was part of the common law of any American colony, depends not upon the fact of the colonists having or not having had occasion to claim and act upon it, on their arrival, but upon the fact of their being or not being anything in their situation, during their early colonial history, so inconsistent with it, as to preclude the idea of its having been brought by them along with the rest of the body of the common law. The presumption is, that the whole of the common law, as it then existed, not inapplicable to the state and condition of the colonists, was brought by them from England. If there were any books published, in any of the colonies, at any time before they legislated on the subject, as their certainly were in many of them, there was nothing in their circumstances and situation unsuited to such a right, or inconsistent with its being claimed and recognized as part of the common law. There were objects to which the right could attach, and any author could claim it as a right at the common law of England. Undoubtedly, the right lay dormant in all the colonies for a long period of time; and afterwards, when books began to be printed, the right was here, as in England, tacitly assumed and acted upon. There is some evidence, however, that it had been regarded as a common law right in several of the states, before the adoption of the constitution of the United States.

“In March, 1783, the legislature of Massachusetts passed ‘an act for the purpose of securing to authors the exclusive right and benefit of publishing their literary productions, for twenty-one years.’ This act was preceded by the following remarkable preamble:— ‘Whereas the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend on the efforts of learned and ingenious persons in the various arts and sciences: As the principal encouragement such persons can have to make great and beneficial exertions of this nature must exist in the legal security of the fruits of their study and industry to themselves; and as such security is one of the natural rights of all men, there being no property more peculiarly a man’s own than that which is produced by the labour of his mind: therefore, to encourage learned and ingenious persons to write useful books for the benefit of mankind, Be it enacted,’ &c.

“This preamble has been justly thought to recognize a right already understood to exist, and it seems manifestly to have been the purpose of the act to provide for the right additional security, and not to create it *de novo*.

“Soon after this act was passed, on the 27th May, 1783, a report was made in the old congress by Mr. Madison, on sundry papers and memorials on the subject of literary property, and the following resolution was passed.

“Resolved, That it be recommended to the several states, to secure to the authors and publishers of any new book not heretofore printed, being citizens of the United States, and to their

executors, administrators and assigns, the copyright of such books for a certain time, not less than 14 years from the first publication; and to secure to the said authors, if they shall survive the term first mentioned, and to their executors, administrators and assigns, the copyright of such book for another term, or time, not less than 14 years; such copy or exclusive right of printing, publishing, and vending the same, to be secured to the original authors or publishers, their executors, administrators and assigns, by such laws and such restrictions as to the several states may seem proper.'

"Pursuant to this recommendation, several states passed laws, with preambles similar to those of the Massachusetts and Connecticut acts, all designed to 'secure' to authors the profits arising from the sale of their works. This studied phraseology, which had not been employed in the English statutes, evinces some intention to protect and secure a pre-existing right. The necessity of state legislation was soon afterwards superseded by the constitution of the United States, (art. 1, s. 8.) which conferred upon congress power 'to promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' As the states could not separately make effectual provision for these objects, the power was wisely granted to the national government.

"The first act passed to carry this provision into effect, so far as it related to authors, was the act of May 31st, 1790, c. xv., entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.' The Supreme Court of the United States have held that this act, instead of sanctioning an existing perpetual right in an author in his works, created the right secured for a limited time; and that the word *secure*, in the constitution, does not mean the protection of an acknowledged legal right, but is used in reference to a future right to be created.

"If this decision is to be understood as declaring that the constitution and the act of 1790 created copyright throughout the United States, it may be readily assented to. We find the states, at the time of the establishment of the constitution, conferring upon the national legislature the power to "secure" the rights of authors and inventors. Each of the states, at that time, possessed the power to secure these rights within its own limits, as part of its sovereignty. But no state legislature could provide securities for the rights of authors which should operate over the whole country, and make a copyright of a book written and published in Massachusetts of equal validity in Pennsylvania. In order, however, to obviate this inconvenience, the state laws, passed before the adoption of the federal constitution, generally contained a proviso, that the benefit of the law was not to extend to authors, inhabitants of, or residing in other states, until such states should have passed similar laws.

"These provisions show that the rights of authors in their published works existed by statute, in some of the states, before the constitution of the United States was formed; and there cannot be much doubt that they also existed, in the older states, at common law. What, then, were the rights of authors, to be "secured," under the power granted to the national legislature? The object to be gained by this grant of power will aid in determining the meaning of the language employed. The object clearly was to enable the general government to make laws which should secure the proceeds of a book in all the states to an author residing and publishing in any one of the states. The old congress had this object in view, when they recommended to the states to pass laws for the purpose; and it was distinctly urged, by the advocates for the adoption of the federal constitution, as the main reason for the provision.

"It would seem, therefore, that the rights of authors to be 'secured' by congress under this clause of the constitution, were exclusive rights to take the profits of their own publications throughout the United States. In this view, the constitution and the act of 1790 created a right which did not exist before; and this may account for the use of the word 'secure.' Whether this power is exclusive, so that the states cannot now legislate for the protection of authors within their own limits, is one of the grave questions of our complex system of government.

"The act of 1790 was followed by a supplementary act, passed April 29, 1802, which extended the benefits of the former statute to engravers.

"By an act passed February 3, 1831, the former laws were consolidated and revised, and this act constitutes the existing copyright law of the United States."

#### ATTORNEYS' CERTIFICATE DUTY.

We have laboured year after year,—now for the 18th Session of parliament,—to enforce the justice of the repeal of this Impost. Many able correspondents have assisted us in our exertions, and we doubt not many will continue to do so.

We find that in some quarters there is an indisposition to exert the influence which the profession possesses towards the redress of this grievance, on the ground that the state of the public revenue affords no hope of success. We think this is an erroneous view of the subject. The justice of the case is so strong, that it must ultimately prevail, and no Session should be allowed to pass without strenuous exertions to repeal the tax.

Aware of the financial reluctance of the Chancellor of the Exchequer to lose a tax which is carried down to the Stamp Office,—without the trouble of collecting,—one of our

old correspondents proposes to substitute a tax on each suit and action. Doubtless this would equalize the burden, and throw the larger part on those who could best bear it; but we abhor all taxes on justice, and question whether the public would bear a direct impost on each suitor, instead of a poll-tax on each lawyer. However, our worthy friend shall speak for himself. The following is the substance of his letter:—

I observe the stir as to the certificate duty, and perhaps the profession may not be both injured and disgraced by payment of the unjust tax next November. I have troubled you so often that I shall now only request that as far as lies in your power you will let the legislature see that this tax is *totally unnecessary*—an argument which, as it does not lessen the revenue, may perhaps penetrate the ears of a chancellor of the exchequer, however fortified they may be against the cry of mere justice.

A duty of 1s. 6d., 1s., or 6d. may be collected with the greatest ease, and no additional expense, by the officers of the legislature and the courts of justice, on proceedings too numerous to be named in railway matters, (which ought to pay handsomely,) also on certain steps in Chancery or common-law suits, and in county courts where 6d. on each case could do no harm. This mode would be preferable, as the tax would fall on the business really done, as ought always to have been the case.

At any rate, the session should not pass over without the alteration I recommend. But still I protest against a tax at all, as unjust, and as a continuance and aggravation of that breach of faith which the country has committed, with respect to the attorneys, in departing from its contract, that the profits of their profession should pay for the money they contributed to support the state in the shape of duty on articles, admissions, and certificates, and for which extra taxation the attorneys are entitled to compensation, which they ought perseveringly to demand.

Our correspondent suggests as an alternative for the stamp duty on law proceedings, a tax on the profits of attorneys, to the amount of 2l. per cent. The effect of this would be, that whilst others paid *three* per cent., the attorneys would pay *five*! This surely would not be endured, though it is one way of showing the monstrous injustice of the existing tax.

Numerous petitions have been presented, of which the following is a list:—

| Attorneys practising at |                    |
|-------------------------|--------------------|
| Exeter                  | Bolton             |
| Chard                   | Bideford           |
| Torrington              | Barnstaple         |
| Shaftesbury             | Aberystwyth        |
| Wincanton               | Wimborne           |
| South Molton            | Horbury and Ossett |
| Sheffield               | Wakefield          |
| Newton Abbott           | Barnsley.          |

## COUNTY COURT DECISIONS.

A correspondent had transmitted the following particulars of a case heard on the 25th of January last, in the County Court of the district of the City Road.

A. accepts a bill of exchange for 5l. 9s. 6d., drawn by B., who indorses it to C. A. dishonours it when presented, and is sued and obtains time under a judge's order, and when the order becomes due pays the amount of bill and costs, (together 9l. 13s. 6d.) For this amount A. sues B. in the County Court of Shoreditch, alleging it is an accommodation bill for B., and produces the bill, judge's order, and receipt for the amount, which are received without any proof, and swears he never had value for it. B. is put into the box; he swears to advancing A. the full amount of the bill, and hands in a paper with the dates and sums, and swears the bill was given for these amounts advanced.

The judge then not only makes an order for payment of the amount by B. to A. of the bill, but also for the amount of costs incurred for A.'s convenience.—Form of action, "Money paid for B.'s use."

Our correspondent then observes, that however right the judge might be as regarded the amount of the acceptance, he submits it was A.'s duty to pay the bill at maturity, and if accepted for B.'s accommodation to have sued him for the amount, but that it is monstrous to make B. pay the *costs* which were incurred for A.'s accommodation.

## VISITS TO THE OLD LAWYERS.

### ANCIENT LIVERY OF SEISIN IN SPAIN.

SIR,—Permit me to correct an error at p. 141, where a Spanish "livery of seisin" is referred to as a *Moorish custom*. It is obviously a gothic formula introduced into Spain by the Visigoths, as it was into England by the Saxons or Normans (likewise Goths). Indeed, the anecdote is manifestly related of Goths and not of Moors; for surely *Don Alonzo Prior*, of a convent in Granada, (where there could have been no convent prior to the expulsion of the Moors,) was a Gothic, and not a Moorish Spaniard. The error is Mr. Ford's, in calling the act a specimen of "the practice of *Moorish* conveyancing."

Were it so, it would exhibit a very curious identity between Arabic and European customs, and would be a valuable and remarkable fact for ethnographers; as it is, however, it is only an instance of the tenacious preservation of customs for many centuries under varying climes and circumstances.

The same custom prevails in Iceland, having been carried thither by the Northmen; and likewise in India, where it probably originated with many other "feudal" customs, and whence it was brought by the Gothic branch of the Indo-Germanic nations.

G. J.

Another correspondent on this subject, observes, that

Mr. Ford is a very high authority upon a Moorish question. His assertion that the form of conveyance in question was Moorish, seems to be quite consistent with the prior possession of Spain by the Goths. The question was not as to the existence of the general custom of Livery of seisin in Spain, but the particular form in this instance, and at the date in question.

#### SUMMARY PUNISHMENT IN ALGERIA.

The following description of the sentence imposed by the Emir is extracted from a work, "The French in Algiers," translated from the German and French by Lady Duff Gordon, p. 148. It far surpasses our old *sus. per col.* on the margin of the Kalendar.

"When the pleadings are ended the Sultan decides singly and without appeal. Without saying a word he condemns the guilty to any kind of punishment *by signs* to the Chaous. He raises his hand and the accused is carried to prison; he holds it up horizontally and the accused is led beyond the limits of the camp, and he is decapitated by the Chaous; he bends his hand towards the earth, and the accused is dragged away and bound, laid flat on the earth, and beaten with a stick. The sultan usually determines the number of blows; if he omits to do so, it is left to the discretion of the Chaous."

### PARLIAMENTARY RETURNS.

#### Court of Common Pleas.

##### MR. JUSTICE COLTMAN.

1, 2, 3, 4.—Description and amount of fees, &c.:

Upon the circuit there is payable to the judge a fee of 6s. 8d. on each cause from the courts at Westminster on which he presides, and 6s. 8d. on each traverse entered when he presides on the criminal side, and 12s. 4d. each entry of what are termed Foreign Records, at Durham.

These sums are applied towards the payment of the circuit expenses.

The fees received amounted to 21l. 6s. 8d.: the circuit expenses, after deducting these fees, and 6l. paid by the sheriffs of different counties where no execution takes place, in lieu of a donation of gloves, amounted to 613l. 6s. 6d.

7.—Sums received by the judge:

Salary as a judge of the Court of Common Pleas, 5,000l. a year; and as a judge of that court, no fees or other emoluments.

The expenses in Serjeants' Inn, and circuit, are paid out of the salary.

##### MR. JUSTICE CRESSWELL.

1, 2, 3, 4.—Description and amount of fees, &c.:

As a judge on the circuit, attended by a mar-

shal, who receives fees varying according to the quantity of business done, and a crier. The crier pays over nothing to the judge. The marshal pays over 6s. 8d. on each cause from the courts at Westminster, entered at those places where the judge as a judge of assize presides on the civil side, and 6s. 8d. on each traverse entered when he presides on the criminal side; and the entries of what are termed Foreign Records, at Durham, at 12s. 4d. each, which is paid over by the prothonotary. All these sums are applied towards the payment of the circuit expenses, which, after deducting those and other small sums, which are sometimes paid by the sheriffs in lieu of the customary donation of gloves at those places where there is no execution, have amounted on an average to 350l. each circuit.

7.—Sums received by the judge:

Salary as a judge of the Court of Common Pleas, 5,000l. per annum, payable out of the Consolidated Fund; and as a judge of that court, no fees or other emoluments.

The expense of chambers in Serjeants' Inn, and circuits, are paid out of the salary.

##### MR. JUSTICE WILLIAMS.

The recent appointment of Mr. Justice Williams renders any return to these questions unnecessary.

#### CLERK AT CHAMBERS AND CRIER ON CIRCUIT TO MR. JUSTICE COLTMAN.

1.—Description and amount of fees, *see* Judges' Clerks' Fees, in the Table of Fees, 1 Vict. c. 30.

2.—Aggregate amount received in respect of such fees, 458l. 11s. 4d.

No portion consisted of salary, or has been paid either into or out of the Consolidated Fund; and the whole has been received and appropriated by the clerk.

The receipts of the judges' clerks are considerably augmented about every fifth year, from the circumstance of one judge only remaining in town during the circuit, to transact the business of the several courts at chambers. During that period (usually about six weeks) the clerks of such judge receive and keep the whole of the emoluments arising therefrom.

##### SECOND CLERK TO MR. JUSTICE COLTMAN.

1.—For description and amount of fees, *see* Judges' Clerks' Fees, in the Table of Fees, 1 Vict. c. 30.

2 & 7.—Aggregate amount received in respect of such fees, &c.:

Aggregate amount received, 551. 7s. 4d. No part consists of salary. The income varies yearly from the fees of the office, and once in every five or six years the fees amount to about three times more than the sum above returned.

5 & 6.—Amount paid into the Consolidated Fund, &c. :—Nil.

## CLERKS TO MR. JUSTICE MAULE.

- 1.—Description and amount of fees, *see Judges' Clerks' Fees*, in Table of Fees, 1 Vict. c. 30.
- 2.—Aggregate amount received in respect of such fees, 966*l.* 18*s.* 9<sup>3</sup>/<sub>4</sub>*d.*
- 3 & 4.—By whom received, &c.:—The clerks, in equal proportions.
- 7.—Sums received by the clerks:—Fees received by each clerk, 483*l.* 9*s.* 4<sup>3</sup>/<sub>4</sub>*d.* No salary received.

## MARSHAL TO MR. JUSTICE MAULE.

- 1.—Description and amount of fees, *see Table of Fees*, 1 Vict. c. 30.
- 2.—Aggregate amount received in respect of such fees:
 

|                              |          |           |           |
|------------------------------|----------|-----------|-----------|
|                              | <i>£</i> | <i>s.</i> | <i>d.</i> |
| Midland summer circuit, 1845 | 55       | 3         | 8         |
| Norfolk spring circuit, 1846 | 50       | 10        | 0         |
|                              | <hr/>    |           |           |
|                              | £105     | 13        | 8         |
- 3.—By whom received:—the marshal.
- 5 & 6.—Amount paid into or out of the Consolidated Fund:—Nil.
- 7.—Sums received by the marshal: 105*l.* 13*s.* 6*d.*, consisting entirely of the foregoing fees.

## CLERKS TO MR. JUSTICE CRESSWELL.

- 1.—Description and amount of fees, *see Judges' Clerks' Fees*, in Table of Fees, 1 Vict. c. 30.
- 2, 3, 4, & 7.—Aggregate amount received in respect of such fees, &c.:  
Aggregate amount received in chambers, after deducting various sums for expenses at chambers, &c., equally divided between the clerks, 3,304*l.* 17*s.* 1*d.*  
On the circuit, 345*l.* 14*s.* 10*d.*, payable (after deducting travelling and other expense) to the chief clerk.

*Note.*—No part of these amounts is received from or paid into the Consolidated Fund, nor does any part consist of salary.

## MARSHAL TO MR. JUSTICE CRESSWELL.

- 1.—Description and amount of fees, *see Table of Fees*, 1 Vict. c. 30.
- 2, 3, 4, 5, 6, 7.—Aggregate amount received in respect of such fees, &c.:  
Gross amount of fees received on the Northern summer circuit, 1845, for business transacted from the Courts of Law at Westminster, the Court of Pleas at Durham, and the Common Pleas at Lancaster, 265*l.* 18*s.* 8*d.*, and which, after deducting various payments and expenses, is payable to the marshal.

No part consists of salary, nor is any part paid into the Consolidated Fund.

*Note.*—Mr. Justice Cresswell remained in town during the Spring circuits, 1846; therefore this return applies only to the circuit as above mentioned, and not to the whole period for which the return was required.

## BAILIFF ON CIRCUIT TO MR. JUSTICE CRESSWELL.

- 1.—Description and amount of fees, *see Table of Fees*, 1 Vict. c. 30.
- 2 & 7.—Aggregate amount received in respect of such fees, &c.:  
Fees received on the Northern summer circuit, 1845, 14*l.* 2*s.* 6*d.*
- 3 & 4.—By whom received, &c.:  
To the bailiff.

*Note.*—Mr. Justice Cresswell remained in town during the Spring circuits, 1846; therefore this return applies only to the circuit as above-mentioned, and not to the whole period for which the return was required.

## Court of Exchequer.

## LORD CHIEF BARON POLLOCK.

- 7.—Sum received by the Lord Chief Baron: Salary, nominally 7,000*l.* per annum; but the expense of the two circuits, which hitherto have been found to be above 300*l.* each, would reduce it to a net salary of about 6,400*l.* per annum.

## MR. BARON PARKE.

- 1, 2, 3 & 4.—Description and amount of fees &c.:

As a judge on the circuit, is attended by a marshal, who receives fees varying according to the quantity of business done; and a crier. The crier pays over nothing. The marshal pays over 6*s.* 8*d.* on each cause, from the courts at Westminster, entered at those places where the judge, as a judge of assize, presides on the civil side, and 6*s.* 8*d.* on each traverse entered when he presides on the criminal side, and 12*s.* 4*d.* for each entry of what are termed Foreign Records at Durham. These sums are applied towards the payment of the circuit expenses, which, after deducting those sums, and other small sums paid by the sheriffs in lieu of the customary donation of gloves, at those places where there is no execution, have amounted on an average to 267*l.* 6*s.* 3<sup>1</sup>/<sub>4</sub>*d.* per circuit.

- 7.—Sum received by Mr. Baron Parke:

Salary as a judge of the Court of Exchequer, 5,000*l.* per annum, payable out of the Consolidated Fund; and as a judge of that court, no fees or any other emoluments.

The expense of chambers in Serjeants' Inn, and circuits, are paid out of the salary.

## MR. BARON ALDERSON.

- 1, 2, 3, 4.—Description and amount of fees, &c.:

As a judge on the circuit, is attended by a marshal, who receives fees varying according to quantity of business done; and a crier.

The crier pays over nothing. The marshal pays over 6*s.* 8*d.*, on each cause from the courts at Westminster, entered at those places where the judge, as a judge of assize, presides on the civil side, and 6*s.* 8*d.* on each traverse



entered when he presides on the criminal side, and 12s. 4d. each entry of what are termed Foreign Records at Durham.

These sums are applied towards the payment of the circuit expenses, which, after deducting those sums, and other small sums paid by the sheriffs in lieu of the customary donation of gloves, at those places where there is no execution, have amounted on an average to 267l. per circuit.

7.—Sum received by Mr. Baron Alderson :

Salary as a judge of the Court of Exchequer, 5,000l. per annum, payable out of the Consolidated Fund; and as a judge of that court, no fees nor any other emoluments.

The expenses of chambers in Serjeants' Inn, and circuits, are paid out of the salary.

#### MR. BARON ROLFE.

1, 3, 4.—Description and amount of fees, &c. :

On the circuits a fee of 6s. 8d. is payable to the judge's marshal, for the use of the judge, on every record entered for trial from any of the courts at Westminster, which fee goes towards the expense of the circuit. It is payable by the party entering the record for trial, and applied towards payment of the circuit expenses, which amount to about 700l. or 800l. a year.

Each judge going the Northern circuit receives from the revenues of the Duchy of Lancaster a payment of about 30l. for his services on the circuit, and for assisting the Chancellor of the Duchy in any appeals which may come before him during the two terms next following the circuit.

No other salary, fees, or emoluments.

7.—Sum received by Mr. Baron Rolfe.

As one of the Barons of the Exchequer, salary of 5,000l. per annum, which is charged on the Consolidated Fund.

#### CLERK AND CRIER, AND BAILIFF TO THE LORD CHIEF BARON.

1.—Description and amount of fees, *see* Table of Fees, 1 Vict. c. 30.

2, 3, 7.—Aggregate amount received in respect of such fees, &c. :

|                            | £   | s. | d. |
|----------------------------|-----|----|----|
| By the clerk and crier - - | 616 | 10 | 6  |
| By the bailiff - - -       | 50  | 16 | 0  |

No salary received.

4.—To whom payable, and how applied :

The fees received by the clerk and crier and the bailiff were applied to their own use, after deducting payments to the ushers for collecting the same, to the hall-keeper for attendance, and for stationery, &c.

5, 6.—Amount paid into the Consolidated Fund, &c. :—Nil.

#### THE CLERKS TO THE LORD CHIEF BARON AND PUISNE BARONS.

1.—Description and amount of fees, *see* Table of Fees, 1 Vict. c. 30 :

2.—Aggregate amount received in respect of such fees :

|   | £     | s. | d. |
|---|-------|----|----|
| Fees received at chambers -                       | 6,739 | 12 | 3½ |
| Ditto Summer circuit and Winter Commissions, 1845 | 566   | 12 | 11 |
| Ditto Spring circuits, 1846 -                     | 596   | 7  | 1½ |

£7,902 12 4

3.—By whom received :

By the clerk and criers respectively.

4, 5, 6, 7.—To whom payable, and how applied :

|  | £     | s. | d. |
|--|-------|----|----|
| The clerks and crier of the Lord Chief Baron - | 1,462 | 1  | 10 |
| Ditto Baron Parke -                            | 1,434 | 14 | 4  |
| Ditto Baron Alderson -                         | 1,458 | 13 | 9½ |
| Ditto Baron Rolfe -                            | 1,895 | 5  | 1  |
| Ditto Baron Platt -                            | 1,651 | 17 | 3  |

£7,902 12 4½

The clerk to Mr. Baron Parke is compensated under 1 Will. 4. c. 58, and receives a moiety of the fees only, and renders annually an account of fees to the Treasury. The other clerks and criers receive no salary.

There are other divers small sums received on circuit.

#### NOTES OF THE WEEK.

##### TRIAL AT BAR.—BUREN F. DENMAN.

THE case of *Buren v. Denman*, which was an action against the Hon. Commander Denman, to recover compensation in damages for the destruction of a factory established by the plaintiff, a Spanish merchant, in connection with the slave trade, at the Gallinas, on the coast of Africa, was tried at bar in the Court of Exchequer, on Monday and the two following days. The Admiralty defended their officer, being represented by the Attorney and Solicitor-General, and the counsel for the Admiralty. The verdict was taken for the defendant, under the direction of the court, upon the ground that Captain Denman's acts at the Gallinas had been ratified, approved, and adopted by the executive government at home. The ratification by the sovereign was held to be equivalent to an original command, in conformity with the common law maxim, *Omni ratihabitio retrotrahitur et mandato priori aequipuratur*.

Mr. Baron Parke, who, as the senior Baron, summed up the case, stated that he entertained some doubt on the point on which the verdict turned, although not sufficient to induce him to dissent from the rest of the court, consisting on this occasion of Barons Alderson, Rolfe, and Platt. A bill of exceptions was tendered to the summing up of the court, upon the part of the plaintiff, and accepted.

As may have been anticipated from the correspondence which has already appeared in our columns on the subject, Sir Fitzroy Kelly did not appear at the trial as counsel for either party.

**METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.**

This association having been fully formed, the committee of management have prepared a statement of their past proceedings and the course they intend to pursue, and have appointed various sub-committees for considering and reporting on the measures to be carried into effect. This statement, or the substance of it, we shall be enabled to submit to our readers in an early number.

**PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.****House of Lords.****NEW BILLS.**

Clergy Offences.—Bishop of London.  
Audit of Railway Accounts. For 2nd reading.—Lord Monteagle.

**House of Commons.****NEW BILLS IN PROGRESS.**

County Rates. For 2nd reading.—Mr. Frewen.

Jewish Disabilities Relief. In Committee.—Lord John Russell.

Epiphany Quarter Sessions. Withdrawn.  
Removal of Poor. For 2nd Reading.—Mr. Baines.

Administration of Justice out of Sessions. (No. 1). In Committee.—Attorney-General.  
Special and Petty Sessions. In Committee.—Attorney-General.

Protection of Justices. In Committee.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). In Committee.—Attorney-General.

Agriculture Tenant-right. For 2nd reading. Mr. Pusey.

Roman Catholic Relief. In Committee.—Mr. Anstey.

Public Health. For 2nd reading.—Lord Morpeth.

Passengers by Sea. For 2nd reading.

**NOTICES OF NEW BILLS.**

Game Laws Amendment. Mr. Colville.

Vacating Seats of Insolvent Members.—Mr. Moffatt.

Imprisonment before Trial.—Lord Nugent.  
To Prevent Bribery at Elections.—Sir J. Pakington.

To Establish an Appeal in Criminal Cases.—Mr. Ewart.

To Repeal the Punishment of Death.—Mr. Ewart.

**NEW BILLS IN PARLIAMENT.****ADMINISTRATION OF JUSTICE (NO. 1).**

THIS bill consolidates and partly amends the several statutes and parts of statutes relating to the duties of justices of the peace *out of Sessions*, with respect to persons charged with indictable offences. For the present, we would call attention to the 18th section, in which it is declared that the justices' room shall *not* be deemed an open court, and that the justices, in their discretion, may order that no person shall have access to their room.

**ADMINISTRATION OF JUSTICE (NO. 2).**

The Statutes relating to *Summary Convictions* and Orders of Justices of the Peace are, with certain alterations, consolidated in this bill. The 11th clause provides, that in these cases of summary conviction, the justices' room shall be deemed an open and public court, to which the public generally may have access, so far as convenient, and both parties may be fully heard and have their witnesses examined and cross-examined by counsel or attorney, except common informers not being the parties aggrieved. (See 1 Archbold's Justice of the Peace, p. 362).

**SPECIAL AND PETTY SESSIONS.**

The meetings of justices of the peace in Special Sessions are provided for in this bill. A Court of Special Sessions is constituted, and the justices are empowered to appoint a clerk of the court, and to pay such clerk by salary, instead of fees, and the fees are to be paid to the treasurer of the county.

**PROTECTION OF JUSTICES.**

Justices of the peace are by this bill to be protected from vexatious actions for the manner in which they exercise their discretionary powers. (See *Bassett v. Godschall*, 3 Wils. 121; 2 Archbold's Justice of the Peace, p. 43).

**RECENT DECISIONS IN THE SUPERIOR COURTS,****REPORTED BY BARRISTERS OF THE SEVERAL COURTS.****Lord Chancellor.**

*Gibson v. Ingo*. Jan. 27, 1848.

**TAXATION OF COSTS.—SERVICE OF SUBPENA TO APPOINT SOLICITOR.**

*The solicitor of a defendant who was abroad, having died during the taxation of the costs ordered to be paid by the defendants, and*

*thereupon the taxing master refusing to proceed, the defendant was ordered to be served with subpoena to appoint another solicitor, and service of it, under the circumstances, at the late residence of parties with whom the defendant last and usually resided, was ordered to be deemed good service.*

Mr. Romilly, with whom was Mr. Heathfield, stated that the plaintiffs, to whom the defendants generally had been decreed to pay the costs of the suit, being desirous of obtaining an order that Mr. Mills, the Taxing Master, should proceed with the taxation, had been directed by his Honour Vice-Chancellor Wigram to make this application to his Lordship. The solicitor of one of the defendants (Simpson) having died since the date of the decree, the Taxing Master declined to proceed until another solicitor was substituted for the former, as the defendant, *Simpson*, was unrepresented; but the latter had left this country for America, where, as was stated in an affidavit, it was believed that he intended to reside permanently. When in this country, being the captain of a merchant vessel, he had no fixed place of abode, but had last resided at the house of his father and sister, who had since left it, and whose present dwelling was not known to the plaintiffs. Under the old practice the parties were represented by their respective clerks in court, and when one of the latter died during the suit, the solicitor named another. Since the 5 & 6 Vict. c. 103, and the General Orders of October, 1842, the solicitors themselves perform the duties of the sworn clerks, &c. The difficulty in the present instance was to ascertain the mode of proceeding when the solicitor was dead and his client abroad. They cited *Ratcliff v. Roper*, 1 P. Wins. 420; *Franklin v. Colhoun*, 12 Ves. 2; and *Shillibeer v. Langdale*, quoted in a note to the last case.

The Lord Chancellor. The order you want is one for a subpœna against the defendant, Simpson, to appoint another solicitor in the room of the deceased. The question is, what service of such subpœna will be sufficient; and this remains precisely as it did before the passing of the above-mentioned act, which merely took away the exclusive right of the six clerks to appear. I will make an order for service of such subpœna on the defendant, Simpson, and that service of it at his late residence, being the residence of his father and sister a short time since, shall be deemed good service.

#### Vice-Chancellor of England.

*Wigginton v. Pateman.* Jan. 20, 1848.

#### DISCLAIMER.—DISMISSAL OF BILL.—COSTS

*On an application of the plaintiff to dismiss his bill with costs against a disclaiming defendant, without prejudice to any question how the costs of such defendant should be ultimately borne, order refused.*

In this case one of the defendants to the suit disclaimed all interest, and Mr. Nalder now applied to the court, on behalf of the plaintiff, that the bill might be dismissed against such defendant, with costs to be paid by the plaintiff, but without prejudice to any question which should be thereafter raised by the plaintiff as to the mode in which such costs should be ultimately borne, citing the case of *Baily v.*

*Lambert*, 5 Hare, 374, as directly in point. None of the other defendants had been served with notice of the motion.

The Vice-Chancellor refused to make the order, saying he could not qualify it in the way asked, as it might throw a liability upon absent defendants.

*Waltan v. Johnson.* Feb. 14, 1847.

#### YEARLY TENANT.—RECEIVER. JUNCTION.

*In order to obtain a special injunction against a yearly tenant, occupying land in the possession of a receiver of the court, by virtue of an agreement with such receiver, it is not necessary that a bill should have been filed against such tenant, although he was no party to the original suit.*

A SUIT had been instituted in this case for carrying out the trusts of a deed, and by a decree in the cause a receiver had been appointed of certain real estates in Yorkshire. John Farmdale was the yearly tenant of one of the farms belonging to the property, and had been let into possession by the receiver with the approbation of the Master. On the 7th September last, the receiver gave him notice to quit: the time of notice would expire in March, 1848, and a proposal to let to another tenant from that time had been carried in and allowed by the Master. John Farmdale was proceeding to remove the hay, green fodder, and manure from the farm, contrary to the custom of the country, as sworn upon affidavit. John Farmdale was no party to the suit. A special injunction, *ex parte*, was now applied for to restrain him from removing the property.

Mr. E. F. Smith appeared for the injunction, and contended that, although no bill had been filed against John Farmdale, it was competent for the court to grant the injunction without such a proceeding, as a receiver had been appointed, who had dealt with J. Farmdale under the sanction of the court.

The Vice-Chancellor said, that the tenant had in fact entered into an agreement with the court itself by means of the receiver, and he did not think it was necessary that a bill should be filed against him. The injunction might be taken in the terms sought.

#### Vice-Chancellor Knight Bruce.

*Knight v. Cawthron.* Dec. 21, 1848.

#### PRACTICE.—23RD ORDER OF AUGUST, 1841.

*Where the executors of one of several next of kin filed a bill against the administrator for an account and payment of their distributive share, it was held that the other next of kin might be served with a copy of the bill, pursuant to the 23rd Order of August, 1841.*

THOMAS CAWTHRON died intestate in August, 1839, and the present suit was instituted by the executors of one of his next of kin, who

were four in number, against the administrator for the purpose of having his accounts taken and the distributive share to which the plaintiffs were entitled, paid to them. The other next of kin were served with a copy of the bill in the cause now coming on to be heard.

*Bacon and Law*, for the plaintiff, proposed to take the ordinary decree to account.

*Russell and Nalder*, for the defendant, required that there should be an inquiry, whether Ann Shillito, one of the next of kin, had sanctioned certain payments as alleged by the defendant's answer.

The *Vice-Chancellor* said, that such an inquiry would be proper, but that he thought the next of kin had been improperly made parties by service of copy of bill only.

*Bacon and Law* cited *Powell v. Cockerell*, 4 Hare, 557, and *Smith v. Tuley*, (V. C. Wigram's Court.)

The *Vice-Chancellor* said, that as Ann Shillito might contend that the plaintiffs' testator was not one of the next of kin, there certainly was a question to be decided between her and the plaintiffs. He would however communicate with Sir James Wigram, who, it was said, had decided a case similar to the present.

At a subsequent period of the day, the *Vice-Chancellor* said, that Sir James Wigram did not remember the point being raised before him, but that he considered the present to be a case within the 23rd Order. As he understood the *Vice-Chancellor* of England held the same opinion with Sir James Wigram, he could not feel himself at liberty to decide contrary to the opinions of two learned judges of such experience.

### Queen's Bench.

(Before the Four Judges.)

*Robins v. Fennell and another.* Michaelmas Term, Dec. 23, 1847.

ATTORNEY.—AGENT.—MONEY HAD AND RECEIVED.

*A client in the country employed a country attorney to sign judgment on a warrant of attorney for him. Execution was sued out, and the London agents of the country attorney sent the writ into the country to be executed. The money was remitted to London and paid into the bankers of the London agents: Held, that money had and received would not lie by the client against the London agents: there was no privity between them.*

SLADE, an attorney in the country, had been employed by the plaintiff to conduct a suit against a person called Heath. Slade employed the defendants as his London agents. A letter was written by Slade to his agents in London, directing them to sue out a writ of *fi. fa.* The writ was accordingly issued, indorsed with the names of the defendants, and delivered to the sheriff, who levied under it, and returned the proceeds into the hands of the defendants. Under these circumstances, an action for

money had and received was brought, by the plaintiff against the defendants for the amount so paid into their hands by the sheriff, and a verdict found for the plaintiff, with leave reserved to enter a verdict for the defendants, if this court should be of opinion that the action was not maintainable. A rule *nisi* having been obtained,

Mr. M. Smith and Mr. Taprell showed cause. The authorities on this subject are rather conflicting. The cases of *Moody v. Spencer*<sup>a</sup> and *Lilly v. Hayes*<sup>b</sup> are strong authorities to show that the present form of action can be maintained. Where a sum of money is specifically paid over as the result of an execution in a particular suit, it becomes money paid to the use of the client. A delegated authority is given to the defendants by the attorney in the country, and by virtue of that authority they receive money which is due to the client, and for that purpose there consequently arises a privity between the plaintiff and the defendants. A case of *Hanley v. Cassam* was decided this last Term in the Exchequer, in which a summary application to that court was granted for the purposes of compelling attorneys to pay over a sum of money under a similar state of circumstances. In *Griffiths v. Williams*,<sup>c</sup> the London agent is spoken of as the plaintiff's attorney in London, and the Court of Exchequer so treated him in the case already referred to.

*Crowder*, contra. The case of *Cobb v. Becke*<sup>d</sup> is the latest decision on this subject. All the cases were there fully brought under the consideration of the court, and it was held that there must be a privity between the plaintiff and defendant to support the action of money had and received. The only case which is really at variance with that decision is *Moody v. Spencer*,<sup>e</sup> which cannot now be supported. *Hanley v. Cassam* is not an authority here, for that was an application to the summary jurisdiction of the court. [Lord Denman, C. J. We will not trouble you any further at present. We will inquire about the case which is said to have been decided by the Exchequer, and let you know whether we require to hear you any further.]

*Cur. ad. vult.*

Lord Denman, C. J. We think the case of *Cobb v. Becke* to be almost identical with the present. The distinction between that case and the previous one of *Moody v. Spencer*, is not satisfactorily established, but if a preference is to be given it must be assigned to the latter of the two cases. We delayed the decision of this case, as we were told that the Court of Exchequer took a different view of the matter, and had in *Hanley v. Cassam* enforced the claim of a client against a London agent. We agree with the case of *Hanley v. Cassam*, in the last number of the *Law Times*, the report of which we believe to be correctly given. That

<sup>a</sup> 2 Dowl. & Ry. 6. <sup>b</sup> 5 Adol. & Ellis, 548.

<sup>c</sup> 1 Term Rep. 710. <sup>d</sup> 6 Adol. & Ellis, 930.

<sup>e</sup> 2 Dowl. & Ry. 6. <sup>f</sup> 6 Q. B. 931.

case lays down the rule, that when a London agent has acted on instructions from a country attorney, and has received money in the action and settled it on account with the country attorney, the court will treat the London agent as the attorney for the plaintiff, and as receiving the money in that character, and therefore liable to pay it over to him. We can easily conceive a case in which the town agent may make himself liable to a country client, and the court may well desire to see that such has been the case, in order to exercise its summary jurisdiction, and in each individual instance compel an attorney to do justice; but where the client does as he has done here, and seeks for relief by action and not by summary application, he cannot recover unless, from the relation which has existed between him and the London agent, the law implies a contract to pay on request. The client here employs the attorney, and is liable to him for costs. In case of negligence in the conduct of the cause the client must bring his action against the attorney. And though the client may probably know that his attorney living in the country, the business must be conducted in town by a town agent, his payment, for the work done to the town agent will not discharge him from his liability to the attorney. In like manner the attorney employs a town agent, that agent does not know the client, and though he actually performs the work, he cannot maintain an action for work and labour against the client. The rights and liabilities of parties under such circumstances are strictly reciprocal. This matter is well expressed by Lord Hardwicke, in the case of *Taylor v. Lewis*.<sup>a</sup> That was a petition to compel one of the six clerks to sign a certificate of the time of filing a replication, but who refused to do so till he had been paid his fees. Those fees had been paid to a sixty clerk, who had absconded, and Lord Hardwicke laid it down as settled, that "the six clerk cannot come on the client or solicitor, but must on the sixty clerk for his fees. With the sixty clerk is the client to have privity or connection, so that payment to him is conclusive to the six clerk. The practice since has been that the sixty clerk has taken on him to pay the six clerk, between whom and the client all intercourse is cut off." It is the same with a London agent. That being the state of things, the question is, which of two innocent parties must suffer by the misconduct of a third. That question must be answered with reference to legal principles which we find well stated in the case of *Williams v. Everitt*,<sup>b</sup> which decides that such an action must result from the privity between the parties. The decision from which we dissent (*Moody v. Spencer*) appears to have been made without reference to *Cobb v. Becke*, and other authorities. There must have been some particular circumstances to give rise to some distinction between the two cases; but if otherwise, then we are compelled to prefer the one to the other.

Rule absolute.

*Robins v. Fennell and another.* Hilary Term, 1848.

A RULE was obtained in the early part of this (Hilary) Term, calling on the London agents to show cause why they should not pay over to the plaintiff the sum of 166*l.* 3*s.*, being the proceeds of the execution paid into their hands by the sheriff.

The affidavits in support of the rule stated, that since the action of *Robins v. Fennell* had been commenced, Slade, the attorney for the plaintiff had become insolvent; that the money was held by Messrs. Fennell & Co., without any authority from Slade, who required the money to be given up immediately; that a correspondence took place between Fennell & Co. and Slade, soon after the money was received, and in the first letter Messrs. Fennell & Co. asked what they were to do with the money remitted by the sheriff; to this letter there did not appear that any answer was given, but in the following letter written by them they claimed to hold the amount against a debt due to them from Slade. On the other side it was alleged, that this money came lawfully into the hands of Messrs. Fennell & Co., and in the ordinary course of business, and that they had a right to retain it on the ground that Slade was indebted to them in a greater amount.

Mr. Crowder and Mr. Bell showed cause. This application to the summary jurisdiction of the court is in fact seeking to get a revision of the former case. Most of the persons who now make affidavit were examined as witnesses at the trial, and might then have been examined as to all the facts which they now state. There being no privity between the plaintiff and Messrs. Fennell & Co., the only remedy which the plaintiff has is against the attorney he employs. There are two cases,—*Ex parte Jones*,<sup>c</sup> and *Gray v. Kirby*,<sup>d</sup>—in which it was held there was no privity between the client in the country and the London agents of the attorney he employs, and that if a London agent receives money improperly, the remedy of the client is not against him, but against his own attorney.

Lord Denman, C. J. There can be no distinction in favour of a summary application to the court in cases where, for particular reasons, an action cannot be brought, and I regret that an observation to that effect was made by the court in the case of *Robins v. Fennell*. This application can only be supported on the ground of fraud.

Mr. M. Smith and Mr. Taprell, in support of the rule. The facts of this case do disclose a state of things sufficient to justify the interference of the court, otherwise, as it was said by Lord Denman, C. J., in *In re Oliver*,<sup>e</sup> "a very impure and often fraudulent practice would prevail." It is clear from the affidavits that Slade never gave any authority to the London

<sup>a</sup> 2 Ves. 111.

<sup>b</sup> 14 East, 584.

<sup>c</sup> 2 Dowl. 161.

<sup>d</sup> 2 Dowl. 601.

<sup>e</sup> 2 Adol. & Ellis, 620.

agents to retain this money, and the correspondence shows that at first Messrs. Fennell and Co. requested to know what they were to do with the money paid into their hands, and did not then claim to retain it against the debt due to them from Slade. The court frequently does exercise its summary jurisdiction over attorneys in cases where no action can be maintained. The court will sometimes require part of the premium given by an articulated clerk to be given up by the attorney, although the clerk has violated his part of the contract, yet, under these circumstances, no action could be supported.

Lord Denman, C. J. Without much considering, in the first instance, whether this is a case contemplated in our judgment, we might be slow to allow the country client to come on the town agent; but the money here does not come into his hands as the town agent, and in the ordinary course of business as such, but out of the ordinary course. The letter referred to in the affidavit shows that to be the fact, and it is only to be regretted that the answer to that letter could not be found and was not set out. The reply, however, in some respect makes up for the omission. It is to this effect,—"We are surprised at your requiring us to refund." That shows that a demand to refund had been made. On this short statement of things, it appears that the client did not receive the money in consequence of the negligence of the London attorney; but this latter had clearly no right to apply money so received to his own use. My doubt is whether, as there has been an action and a trial, we ought now to allow Robins to obtain the money on a summary application.

Mr. Justice Patteson. If this money had been received in the ordinary course of business, and not under special circumstances which would make the London agent liable, I should have thought that there could be no distinction between a summary application and an action. But here the money was not received in the ordinary course of business, but the undersheriff, on not finding the country attorney at home, sent to the London agent. It is manifest that the London agent had not received the assent of the country client to put this money into the general account, for there was an expression of surprise at being called on to refund it. These facts distinguish this case from the other. The nonsuit there was not wrong, because there was no privity between the parties. But here is a case where privity is not necessary to enable one of the parties to apply against the other in a summary form.

Mr. Justice Coleridge. I am entirely of the same opinion.

Mr. Justice Wightman concurred.

Lord Denman, C. J. I am not sure that these facts would not maintain the action, for where a person gets my money I have a right to say he gets it to my use. The matter is not founded on privity. He has got the money wrongfully. Rule absolute, with costs.

### Queen's Bench Practice Court.

(Before Mr. Justice Wightman.)

Todd v. Johnson. Jan. 26, 1848.

#### PRACTICE.—SECURITY FOR COSTS.

*The defendant obtained an order for security for costs, on the ground that the plaintiff resided out of England. Before that order was complied with the defendant arrested the plaintiff in a cross action, and the latter went to prison, and then took out a summons to rescind the order for security, upon which an order was made suspending that order as long the plaintiff remained in actual custody in the cross action, and giving the defendant in the present action 10 days' time to plead. Some days after this the defendant in this action discharged the plaintiff out of custody, who at the expiration of the 10 days signed judgment for want of a plea, though he (the plaintiff) had not given security. Held, that the judgment was irregular, as the order for security for costs revived on the plaintiff's discharge from prison.*

On a former day *H. Hill* obtained a rule, calling upon the plaintiff to show cause why the judgment signed herein as for want of plea, should not be set aside for irregularity. The facts were as follows:—On the 11th November, the defendant obtained an order, requiring the plaintiff to give security for costs, with a stay of proceedings until given, on the ground that he was residing out of England. The defendant having a cross demand, arrested the plaintiff, who thereupon went to prison. Upon this the plaintiff in the present action (who had not complied with the order) took out a summons, upon which the following order was made:—"I do order that my order restraining the plaintiff from proceeding be suspended as long as he remains in actual custody in the cross action, the defendant in this suit to have ten days peremptorily to plead pleading issuably." Seven days after the making of this order, the present defendant sent a discharge to the plaintiff, and he was thereupon released from custody, and the defendant not having pleaded within the ten days the plaintiff signed judgment, he however not having given security for costs. The present rule was obtained on the ground, that as the order suspending the order for security for costs operated only so long as the plaintiff remained in actual custody, it revived on his being released, and that therefore the defendant was not bound to plead until such security was given.

*Bramwell* showed cause, and contended, that as the letting of the plaintiff out of custody was the defendant's own act, it did not revive the former order.

*H. Hill*, contra, was not called upon.

*Wightman, J.* The order which I made restraining the order for security for costs was intended to operate only so long as the plaintiff was in actual custody, and I made it upon a consideration of the hardship of its operation

whilst the plaintiff was in actual custody at the defendant's suit, but as soon as the plaintiff became released it would of course revive, and before therefore the plaintiff could call upon the defendant to plead, he ought to have given security. The judgment was therefore irregular, and this rule must be absolute.

Rule absolute.

### Common Pleas.

*Stead v. Williams.* Hilary Term, 1848.

#### INSOLVENT PLAINTIFF.—SECURITY FOR COSTS.

*In an action for the infringement of a patent, the court will not grant a rule nisi calling upon an insolvent plaintiff to give security for costs, where the circumstances do not at least lead to a strong presumption that his assignee will adopt the action and proceed for the benefit of the estate.*

Channell, Serjeant, moved in this cause on behalf of the defendant for a rule, calling upon the plaintiff and the assignee in the Insolvent Court, to show cause why the plaintiff should not give security for costs, and why the proceedings in the mean time should not be stayed. The action was for the infringement of a patent, and had been tried at the Liverpool Summer Assizes, 1843, when the plaintiff obtained a verdict. A rule for a new trial was made absolute in Trinity Term, 1844, and the venue soon after changed to Middlesex. On the 25th of November last, no proceedings in the action having taken place since Trinity Term 1844, the plaintiff was committed to the Queen's Bench prison under an execution at the suit of a creditor, for 377*l.* 7*s.* On the 21st December an order was made, upon the petition of the execution creditor, under the 1 & 2 Vict. c. 110, ss. 36 and 37, vesting all the estate and effects of the plaintiff in the provisional assignee of the Insolvent Court, and since that the plaintiff had given notice of trial. Under these circumstances it was submitted the rule ought to be granted, *Denton v. Williams*, 8 Dowl. 123; insolvency in this respect stood on the same footing as bankruptcy, *Henford v. Knight*, 2 B. & C. 579. The right claimed in the present case might become that of the assignees, and be materially for the benefit of the bankrupt's estate, although the damages in the action might not go to the assignees. On this point the case of *Denton v. Williams* was very like the present.

Maule, J. Show that the plaintiff is proceeding not for himself but for somebody else, and that he is a man of straw, and then you will no doubt be entitled to security for costs. If the assignee is not interfering, and the insolvent himself proceeds in the action, you cannot have a rule.

Channell, Serjeant, referred to *Wray v. Brown*, 8 Scott, 557.

Wilde, C. J. We cannot assume that the assignee will adopt this action, and there is the absence here of any ground for believing

that the assignees would proceed with the cause. If the rule were granted, and it appeared upon affidavits that the assignee would not adopt the action, the rule would be discharged, and unless the present circumstances were such as to lead to a strong presumption that the assignee would adopt the action and proceed for the benefit of the estate, the court could not interfere even to the extent of granting a rule.

Rule refused.

### Exchequer.

*Wenham v. Bowman.* Jan. 27, 1848.

DISCHARGE OF A PERSON IN PRISON UNDER AN ATTACHMENT ISSUED OUT OF THE COURT OF CHANCERY.—COMMON LAW COURT NO POWER TO RE-COMMIT.—SERVICE OF RULE.—COSTS.

*Where a prisoner in execution under an attachment issued out of the Court of Chancery, applies to a judge at chambers under the 7 & 8 Vict. c. 96, and upon an affidavit of service of the summons, which, however, has never been served so as to reach the party, and the judge makes an order for his discharge, the court will grant a rule to set aside such order, except so far as it may operate to protect the officer of the prison.*

*The court will direct the costs of the application for such rule to be paid by the prisoner.*

*When a judge at chambers has erroneously ordered the discharge of a prisoner, confined under an attachment issued out of the Court of Chancery, this court has no power to direct that he be re-committed.*

*When in such case neither the prisoner nor his attorney are to be found, the court will deem a service at the place from which the affidavits are dated to be sufficient.*

On the 1st December, 1847, the plaintiff was taken in execution under an attachment issued by the Master of the Rolls, and afterwards, on his own application, removed to the Queen's prison, until he should have paid the costs of the defendant in the suit. On the 7th January, in consequence of an application made on behalf of the plaintiff to Mr. Baron Platt at chambers, upon an affidavit intituled "*Ex parte Wenham*," a summons was issued calling upon the defendant's attorney to show cause why the plaintiff should not be discharged out of custody. It was said this affidavit was untrue. There was no service of the summons upon the defendant's attorney, nor had he any knowledge of it; but upon subsequent inquiry, it was discovered that it had been left with a woman who had the general superintendence of the building, in a part of which the defendant's attorney had chambers. No person appearing for the defendant, a rule was obtained under the 7 & 8 Vict. c. 96, for the plaintiff's discharge upon an affidavit that the summons had been left with the housekeeper of the defendant's attorney. This affidavit was intituled



in the cause "*Wenham v. Bowman*," although at the time there was no such cause. Under these circumstances,

*Ball*, on the 22nd of this month, obtained a rule *nisi* to discharge the order of Mr. Baron Platt, and that the plaintiff be re-committed to his former custody, and pay the costs of that application. Neither the plaintiff nor his attorney were to be found. Now

The Court directed that the rule should be served at the place where the affidavit upon which the plaintiff's discharge was obtained was dated from.

*Lush*, against the above rule, this day showed cause, and contended that a judge at chambers had power under the statute to discharge a party in custody under an order of the Court of Chancery. If it was intended to be said that the judge had been imposed on, that entirely failed, because the affidavit stated that he was in custody under an attachment out of the Court of Chancery. No doubt the affidavit was intituled as if in a cause in this court, but

it stated all the facts truly, and was before his lordship when the order for the plaintiff's discharge was obtained. [*Parke, B.* The parties never were served with the summons, and so did not appear to oppose the rule; and in such a case, beyond the mere fact of service, which in this case was sworn to, the judge never looks at the affidavit, and the party is discharged as a matter of course.] He then contended that the court had no power to re-commit a person under an attachment which issued out of the Court of Chancery. That court alone had jurisdiction in such a case. And this court having no power in the matter, the order was a nullity, and therefore there was no occasion to set it aside. [*Parke, B.* We can set aside the order of Mr. Baron Platt, and then the parties will be in much the same situation as they were before the order.]

*Per curiam.* The order must be set aside, and remain as if never issued, except for the protection of the officer.

Rule absolute accordingly.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### GROUND OF ACTION AND PRINCIPLES.

##### AGENT AND PRINCIPAL.

See *Mining Company*.

##### ASSIGNMENT.

*Conveyance of present, not future property.*  
—*A.*, to secure the payment of 518*l.* by him to *G.*, assigned by indenture of Jan. 1, 1843, all his goods and farming stock, which were then, or which at any time during the continuance of that security should be, in, about, and belonging to *A.*'s house and farm, to *G.*, his executors, &c., as his and their own proper goods and chattels: proviso, that if *A.* should pay *G.* the said 518*l.* on 1st January, 1845, or at such earlier day or time as *G.*, &c., should appoint by notice in writing to *A.*, at least 10 days before the time to be appointed, with interest in the meantime, then those presents should cease and determine. *A.* covenanted to pay principal and interest accordingly; and it was declared that after default, and, as respected the interest, after notice in writing requiring payment, it should be lawful for *G.*, &c., to receive and take into their possession, and thenceforth to hold and enjoy, the said goods, &c., and also to sell and dispose of the same and every part thereof, and out of the proceeds to retain the principal, interest, and expenses, and to render the surplus to *A.*, &c.; and that until default it should be lawful for *A.*, &c., to hold, make use of, and possess the goods, &c., without disturbance by *G.*, &c.

*A.* not having paid the interest, *G.*, without

notice in writing, on 1st Jan., 1844, took possession of all the goods, &c., then in and about the house and farm, including the last year's crop of hay, and some other articles which were not *A.*'s at the time of the assignment, but had been since brought by him into the farm. On *G.*'s entering to take possession, *A.* delivered to him part in the name of the whole, and signed a memorandum of the delivery, acknowledging that he had made default in payment of the principal and interest, after receiving due notice to pay. On a feigned issue to try whether the goods, &c., or any part of them, were the property of *G.* at the time of the delivery to the sheriff, after 1st Jan., 1844, of a *fi. fa.* against *A.* at the suit of another creditor: *Held*, that the assignment was a present conveyance from *A.* to *G.*, so as, immediately on the execution of the indenture, to vest the property in the goods, &c., then in and about the house and farm, in *G.*; and that the proviso did not operate as a demise of those goods, &c., to *A.*

But that the deed did not operate as an assignment of property thereafter to arise or be brought upon the premises. *Gale v. Burnell*, 7 Q. B. 850.

##### BANKERS.

*Lien on securities of customers.*—The general lien of bankers on securities of their customers deposited with them, is part of the law-merchant, and to be taken judicial notice of as such.

*A.* bought on account of *B.*, and with *B.*'s money, certain exchequer bills, which *A.* deposited in a box that he kept at his bankers, himself retaining the key. Whenever it be-



came necessary to receive the interest on the exchequer bills, and to exchange them for new ones, *A.* was in the habit of taking them out of the box and giving them to the bankers for that purpose (such being the usual course of business); which being accomplished, the new exchequer bills were, as soon as conveniently might be, handed over to and locked up by *A.* in the box, the amount of interest received by the bankers being passed to the credit of *A.*'s account. The exchequer bills themselves were never entered to *A.*'s account, nor had the bankers any notice or knowledge that they were not the property of *A.* himself.

On the 1st of December, 1836, *A.* took the exchequer bills out of the box, and delivered them to the bankers for the purpose of receiving the interest and exchanging them for new ones. The bills were accordingly exchanged, but the bills (*A.* being absent from business on account of illness) remained in the possession of the bankers down to the time of *A.*'s failure, on the 23rd of January, 1837, his account in the meantime having been considerably overdrawn: *Held*, in an action at the suit of *B.*, the true owner, (reversing the judgment of the Exchequer Chamber,) that the bankers had no lien upon these exchequer bills for the general balance due to them from *A.*, although such securities are transferable by delivery; the circumstances under which they came to their hands being inconsistent with the existence of a general lien. *Brandao v. Barnett*, 3 C. B. 519. See also 1 M. & G. 908; 2 Scott, N. R. 96.

Case cited in the judgment: *Davis v. Bowsher*, 5 T. R. 491.

#### BILL OF EXCHANGE.

1. *Indorsement to officer, as such, not named.—Change of officer.*—Declaration in assumpsit stated that *E.* drew a bill of exchange on defendants, payable to order of *O.*; that defendants accepted; that *O.* indorsed to "The Treasurer General of the Royal Treasury of Portugal;" and that *C.*, then being the Treasurer General aforesaid, indorsed to plaintiff.

Pleas. 2. That the said Treasurer General of the Royal Treasury of Portugal did not indorse to plaintiff, and issue thereon.

3. That the said Treasurer General, by whom the indorsements were alleged to have been made, at the time when he indorsed was not such Treasurer General as was designated and intended by the indorsement of *O.*, but minister of a hostile government, and had no title or authority to indorse: replication, that the Treasurer General who indorsed was the Treasurer General designated, &c., (not adding at the time, &c.) and issue thereon.

It was proved that the bills were indorsed for the use of *M.*, then King of Portugal, and received by *C.*, being then, and at the time of the first indorsement, his treasurer; but that, after *M.*'s government had been subverted by a hostile one, and *C.* removed from office, *C.* indorsed: *Held*, that *C.* by the indorsement

and delivery to himself, acquired an absolute title to the bills, and a power to indorse, which could not be qualified by any intention of *O.* not expressed in the indorsement, even if such qualification could be annexed to an indorsement at all; and *semble*, that it could not; and that it was immaterial whether *C.* was Treasurer General at the time of his indorsing over or not, and that the words *at the time, &c.*, were therefore properly omitted from the issue taken. *Soares v. Glyn*, 8 Q. B. 24.

2. *Title of indorsee of bill fraudulently drawn.*—To an action by indorsee against *A.* and *B.*, as drawers of a bill of exchange, indorsed to *C.*, and by him to the plaintiff, *A.* pleaded that he and *B.* were in co-partnership as brewers; that *B.* made and indorsed the bill, using the name of the firm, in fraud of *A.*, and not for the purposes of the co-partnership, but for his own private purposes, viz., for a private debt due from him to *C.*, and without the knowledge or consent of *A.*; that there was no consideration or value to him, *A.*, for the drawing or indorsement of the bill; of all which premises *C.*, at the time of the indorsement to him, had knowledge and notice; and that at the time when the bill was indorsed and delivered to the plaintiff, he had full knowledge and notice of all the premises in the plea aforesaid. Replication, that at the time when the bill was indorsed and delivered to the plaintiff, he had not any such knowledge or notice as in the plea mentioned; and issue thereon.

At the trial the jury found that *C.* had no knowledge of the original fraud in the drawing of the bill, but that the plaintiff, at the time of the indorsement to him, had knowledge of that fraud: *Held*, that the plea was not proved. *May v. Chapman*, 16 M. & W. 355.

And see *Chose in Action; Mining Company*.

#### BOROUGH RATE.

1. *Burgess Roll.*—The council of a borough made a borough rate to levy 669*l.*, and assessed a portion of that sum on the parish of *W.* within the borough. The rate ordered was 6*d.* in the pound on the value of messuages, &c.; and the council appointed overseers to levy it in *W.* The overseers, in consideration of circumstances peculiar to *W.*, made and assessed the rate on that parish at 7*d.* in the pound. *B.*, an inhabitant, refused payment; his name was, in consequence, left out of the burgess list, and the mayor and assessors refused to insert it in the burgess roll.

*Held*, that the rate of 7*d.* was invalid. And the court awarded a mandamus to the mayor and assessors to enrol *B.*'s name. *Reg. v. Mayor of N. Windsor*, 7 Q. B. 908.

2. *Mandamus.*—A writ of mandamus to the mayor and assessors of a borough to enrol the name of *B.*, an inhabitant, recited that *B.*, who was a person duly qualified and entitled to be enrolled in the burgess roll of the borough, in respect of property within the said parish and borough, was omitted, &c. The return certified that *B.* was not a person duly qualified or entitled to be enrolled in the burgess roll of

the said borough, in respect of property within the said parish as in the writ mentioned; and it then further certified the making and assessing of a rate, and *B.*'s refusal to pay, and that, because of such refusal, and for other the causes aforesaid, *B.* was not qualified to be enrolled, &c.

*Held*, on demurrer, that the latter part of the return was bad by reason of the objection to the rate; but that the former part might be separated from the latter, and was a sufficient answer to the writ. *Reg. v. Mayor of N. Windsor*, 7 Q. B. 908.

Cases cited in the judgment: *Rex v. Williams*, 8 B. & C. 681; *Wright v. Fawcett*, 4 Burr. 2041.

#### BROKER.

A person who hires or procures, for another, persons to be employed by him in the laying out and surveying of a line of railway, is not a *broker* within the statutes 13 Edward 1, st. 5, and 6 Anne, c. 16, s. 4, which prohibit persons from acting as brokers within the city of London, unless licensed by the court of the mayor and aldermen. *Milford v. Hughes*, 16 M. & W. 174.

See *Ship Broker*.

#### CHOSE IN ACTION.

*Married woman.*—*Bills and notes.*—In assumpsit by payee against maker of a promissory note, defendant pleaded that, when the note was made, plaintiff was the wife of *B.*, and that, after the making, and while plaintiff was the wife of *B.*; he "elected to take and have the said note in his marital right, and then caused the plaintiff to indorse, and she, by his authority, did then "indorse" the note, and *B.* then delivered it, so indorsed, to *F.*; and that afterwards, and after the note became due, and before action brought, *B.* died; and that afterwards, and before action brought, the note came to plaintiff's possession by delivery from *F.*

*Quere*: supposing that the words "elected to take," &c., and "caused the plaintiff to indorse," &c., contained averments of two distinct acts, whether the plea was not bad for duplicity. But, assuming that the whole merely stated one transaction: *Held*, on special demurrer, that the plea was bad, because it did not clearly show such a reduction of the note into possession by the husband as disentitled the wife to sue upon it after his death. Defendant also pleaded the Statute of Limitations. Replication, that, when the cause of action accrued, plaintiff was the wife of *B.*, and that she continued to be so until, &c., when *B.* died, and plaintiff became discovert; and that she was sued within six years after the death: *Held*, a good replication.

Rejoinder: That plaintiff was a *feme covert* and the wife of *B.* until the time of his death, as in the replication mentioned; that the note was payable to her order; and that, before it was due, *B.* authorized her to indorse it in blank in her own name, and deliver it to *F.*, which she did, for value; that, when the note

became due, and more than six months before action brought, the note was in the hands of another indorsee, who presented it for payment; and that afterwards, and before action brought, the note came to the possession of plaintiff by delivery from the last-mentioned indorsee, who was then entitled to sue thereon: *Held*, on special demurrer, that the rejoinder was bad; for either the matter alleged was a departure after pleading the Statute of Limitations, which plea admitted an original right of action; or, if the rejoinder was confined to the matter stated in the replication, it was no answer, for want of a denial that the action was brought within six years of the husband's death. *Scarpellini v. Atcheson*, 7 Q. B. 864.

Cases cited in the judgment: *Richards v. Richards*, 2 B. & Ad. 447; *Gaters v. Madeley*, 6 M. & W. 423; *Hart v. Stephens*, 6 Q. B. 937; *Garforth v. Bradley*, 2 Ves. sen. 675, 676; *Milner v. Milnes*, 3 T. R. 627, 631; *Cotes v. Davis*, 1 Camp. 485; *Gale v. Caporn*, 1 A. & E. 102.

#### CONSIDERATION.

See *Frauds, Statute of*.

#### COPYHOLDS.

A special case stated that lands in a certain manor were held by customary tenure, passed by admittance for the joint lives of the lord and tenant, were descendible from ancestor to heir, and, *inter vivos*, passed by deed of customary conveyance, (licensed by the lord,) with surrender and admittance. The case further stated that, before stat. 7 W. 4, and 1 Vict. c. 26, there was no instance of a devise made by a customary tenant of the legal estate of any lands in the manor, but it had frequently occurred that a tenant, wishing to dispose of his customary estate after death, conveyed by deed of customary conveyance, and surrendered to a trustee as on an ordinary alienation, the trusts of the equitable estate being then declared by a separate instrument, and being usually for the alienator during his life, and, after his death, to convey to such person as he should by deed or will appoint; but there was no instance of a devise of any customary tenement in the manor without such previous conveyance, surrender, and declaration of trust.

*Held*, that on this statement the tenement must be considered as descendible from ancestor to heir, subject to the ordinary rules governing copyhold estates. That a custom not to pass estates by devise, or to pass them by some substituted method, was not shown clearly enough to supersede the ordinary right of a copyholder to devise his lands; and therefore, that a devise of such lands without surrender to the use of the will, (before stat. 7 W. 4, and 1 Vict. c. 26,) was sustained by stat. 55 G. 3, c. 192, s. 1, and not excluded from its operation by the latter clause of sect. 3. *Doe d. Dand v. Thompson*, 7 Q. B. 897.

Cases cited in the judgment: *Doe d. Edmunds v. Llewellyn*, 2 C. M. & R. 503; 5 Tyrr. 899; *Pike v. White*, 3 Bro. C. C. 288.

## COUNTY COURT.

*Ouster of jurisdiction in replevin.*—*Title to the freehold.*—The jurisdiction of the County Court is ousted by a plea or cognisance setting up a title to the freehold, although no issue be taken on that part of the plea or cognisance.

Where, therefore, the defendant in replevin made cognisance as bailiff of *A.*, alleging that the *locus in quo* was the freehold of *A.*, and that he, as bailiff, took the cattle, &c., damage feasant: and the plaintiff pleaded that the defendant was not the bailiff of *A.*, and did not, as such bailiff, take the cattle, &c.; and issue was joined on this plea: *Held*, that the subsequent proceedings in the county court were *coram non iudice*, and void. *Tinniswood v. Pattison*, 3 C. B. 243.

Case cited in the judgment: *Cannon v. Smalwood*, 3 Levinz, 203.

## COVENANT.

See *Restraint of Trade: Surety*.

## DEVISE.

1. *Construction.*—*Estate in fee.*—*A.*, by a will (executed before the 1st of January, 1838), devised as follows:—“I give and bequeath to my son *B.*, the moiety of the house he now lives in, and all my personal property in his keeping: *Held*, that *B.* took the moiety of the house in fee. *Doe d. Atkinson v. Fawcett*, 3 C. B. 274.

Case cited in the judgment: *Paris v. Miller*, 5 M. & S. 408.

2. *Construction.*—*Estate for life.*—Testator devised lands to his son for life, with remainders in strict settlement to his issue; remainder to the testator's grandson *A.*, for life, remainder in strict settlement to his issue; “and in default of such issue, then to the use of my grandchildren, *B. C. D.* and *E.* (brothers and sisters of my grandson *A.*), if they shall happen to be living at the time of his decease, for their lives, and the life of the survivor of them, to take as tenants in common, and not as joint-tenants; and from and after their several deceases, and the decease of the survivor of them the said *B. C. D.* and *E.*, to the use of the first and all and every the son and sons of the body and bodies of my said grandchildren, severally and successively and in remainder, one after another, as they and every of them shall be in priority of birth and seniority of age, and of the several and respective heirs of the body and bodies of all and every such son and sons living, the elder of such sons and the heirs of his body, being always preferred and to take before the younger of them and the heirs of his and their body and bodies, to take as tenants in common and not as joint-tenants;” and for want or in default of such issue, to all and every the daughter and daughters of the four grand-children in like manner: “and in case either of my said grandchildren, *B. C. D.* and *E.* shall happen to die, leaving no issue behind him, her, or them, then my will and meaning is, that all and singular the premises herein lastly, devised, shall go and remain to the survivor

of them, and the heirs of his or her body lawfully to be begotten, in manner aforesaid; and, on failure of issue of either of their bodies lawfully begotten, then I give, devise, and bequeath the same premises to the use of the children of my brothers *F.* and *G.*,” &c. The testator's grandson *C.*, survived his brothers and sisters, and entered into possession, the testator's son and his grandson *A.*, having both died without issue:

*Held*, that *C.* took an estate for life only; the effect of those words “shall go and remain to the survivor of them, and the heirs of his or her body lawfully to be begotten in manner aforesaid,” being, to bring the lands, in the event to which the clause in which they were found applied, within the preceding clause, which gave life estates to the grandchildren, with remainders in tail to their sons and daughters; and there being no said part of the will to which the words of reference, “in manner aforesaid,” could be applied. *Doe d. Woodall v. Woodall*, 3 C. B. 349.

Cases cited in the judgment: *Meredith v. Meredith*, 10 East, 510; *Lisle v. Gray*, 2 Lev. 223; *Sir T. Jones*, 114; *Sir T. Raym.* 278, 302, 315; *Pollexf.* 582; 2 Shower, 7; 1 Freem. 462; 2 Atk. 91; Eq. Ca. Abr. 133; *Lowe v. Davies*, 2 Lord Raym. 1561; *Jesson v. Wright*, 2 Bligh, 1.

## EJECTMENT.

*Churchwardens.*—*Poor.*—Where lands have been held jointly by the churchwardens and overseers of a parish and by the corporation of a borough in which it lies, the latter holding as trustees, not on any special trust, but for general parochial purposes, the churchwardens and overseers may bring ejectment for such lands as vested in them by stat. 59 G. 3, c. 12, s. 17. *Doe d. Edney v. Billett*, 7 Q. B. 976.

## ESTATE IN FEE.

See *Devise*.

## ESTATE FOR LIFE.

See *Devise*.

## FACTOR.

*Authority to sell for repayment of advances.*—The mere relation of principal and factor confers, ordinarily, an authority to sell at such times and for such prices as the factor may, in the exercise of his discretion, think best for his employer; but if he receive the goods subject to any special instructions, he is bound to obey them. The authority, whether general or special, is revocable.

*Quære*, whether the factor's authority to sell can be revoked after he has made advances upon the credit of the goods consigned to him, his authority then being coupled with an interest. *Smart v. Sandars*, 3 C. B. 380.

Case cited in the judgment: *Pothonier v. Dawson*, Holt, N. P. C. 383.

## FORBEARING EXECUTION.

*Damages for breach of agreement.*—*A.*,

having recovered a judgment for 280*l.* against *B.*, agreed with *C.* to forbear to sue out execution on the judgment until a certain day, in consideration of which *C.* agreed that he would, on or before that day, erect a substantial house, and cause a lease of it to be granted to *A.*; such lease, when granted, to be in satisfaction of the judgment. In an action for the breach of this agreement, *Held*, that the value of the house was the measure of damages, and that such value was properly estimated at the amount of the judgment debt. *Strutt v. Farlar*, 16 M. & W. 249.

#### FORMA PAUPERIS.

*Collusive release by a plaintiff.—Practice.*

—A pauper plaintiff having, behind the back of his attorney, and under circumstances showing a desire on his part to deprive him of his costs, agreed with the defendants, in an action for unliquidated damages, to execute a release, and the defendant having pleaded such release *puis darrein continuance*, the court, at the instance of the attorney, set aside the plea.

The plea was delivered on the 22nd of April. The motion to set it aside was not made until the 8th of June: *Held*, not too late, it not being a mere irregularity. *Wright v. Burroughes*, 3 C. B. 344.

[This portion of the Digest will be continued in our next number.]

### BUSINESS OF THE COURTS.

#### HOUSE OF LORDS CAUSE LIST.

SESSION 1847-8.

##### *Causes appointed for Hearing.*

1845, *Leith v. Young* (waiting to be heard on remitt).—*Scotland*.

*Polloc and Govan Railway Company v. Newton*, (abated).—*Scotland*.

1846, *Mayor, &c., of London v. The Attorney-General*, Chy.—*England*.

*Foley v. Hill* (abated), *ex parte*, Chy.—*England*.

*Maddocks v. Roberts*, (abated).—*England*.

*Rowley v. Adams*, *ex parte* (as to certain respondents).—*England*.

*Wyatt v. Adams*, (*ex parte* as to certain respondents).—*England*.

In part heard, *Christie v. Allen* (or *Hoskins*).—*Scotland*.

*Boughton v. Boughton*, *ex parte*, as to certain respondents, Chy.—*England*.

*Boughton v. James*, *ex parte*, as to certain respondents, Chy.—*England*.

*Drummond v. The Attorney-General*, Chy.—*Ireland*.

*MacLachlan* (or *Fyffe*) *v. Gillies*.—*Scotland*.

Fully heard, *Fleming v. Newton*.—*Scotland*.

1847, *Graham v. Mackay*, *ex parte*.—*Scotland*.

*Turnbull v. Cowan*.—*Scotland*.

*Sir T. Wilde v. Gibson*, Chy.—*England*.

*Ricketts v. Turquand*, Chy.—*England*.

*Duke of Hamilton and Brandon v. Bryson*.—*Scotland*.

*Stirling v. Moray* (or *Drummond*), *ex parte*.—*Scotland*.

*Preston v. Clarke*.—*Scotland*.

*Lapsley v. Grierson*.—*Scotland*.

*Taylor v. Stronach*, *ex parte*.—*Scotland*.

*The Attorney-General v. Cox*, Chancery.—*England*.

*Watson v. Johnstone*, *ex parte*.—*Scotland*.

*Le Fann v. Malcomson*, writ err., Exch. Chamber.—*Ireland*.

*Barrett v. Long*, writ err., Exch. Chamber.—*Ireland*.

*Mann* (pauper) *v. Smith*.—*Scotland*.

*Baillie v. M'Gibbon*, 1st appeal.—*Scotland*.

Same *v. Same*, 2nd appeal.—*Scotland*.

*Fleming & Co. v. Smith*.—*Scotland*.

*Doe* (on demise of *Daniel*) *v. Woodroffe*, writ err., Exch. Chamber.—*England*.

*Woodroffe v. Doe* (on demise of *Daniel*) writ err. Exch. Chamber.—*England*.

*Potts v. Potts*, (abated), Chy.—*Ireland*.

*Ledsam v. Russell*, writ err. Exch., Chamber.—*England*.

*Stirling and Dunfermline Railway Company v. Dalgleish*.—*Scotland*.

*The Hon. C. F. Toler v. Graham*, Chy.—*Ireland*.

*O'Connell v. Mansfield*, *ex parte*, writ err., Exch. Chamber.—*Ireland*.

*Marquess of Breadalbane v. M'Gregor*, *ex parte*.—*Scotland*.

*Mayor, &c., of London v. Combe*, Chy.—*England*.

*North British Railway Company v. Horne*, *ex parte*.—*Scotland*.

*Judges, Benson v. Chapman*, writ err., Exch. Chamber.—*England*.

*Fulham v. M'Carthy*, *ex parte*, Chy.—*Ireland*.

*Baillie v. Palmer*, Chy.—*England*.

*Foster v. Foster*, *ex parte*, Chy.—*Ireland*.

*Grantham Canal Navigation Company v. Hall*, writ err., Exch. Cham.—*England*.

*Principal, &c. of Glasgow College v. The Attorney-General*, Chy.—*England*.

*The Duke of Brunswick v. The King of Hanover*, Chy.—*England*.

1847, 1848, *Craig v. Duffus & Co.*, 2nd appeal.—*Scotland*.

*Bain v. Black*.—*Scotland*.

*Livingstone v. Proudfoot*, *ex parte*.—*Scotland*.

*Sir H. Bridges v. Alexander D. Fordyce*.—*Scotland*.

*Edinburgh, Leith, and Granton Railway Company v. The Lord Provost, &c. of the City of Edinburgh*, *ex parte*.—*Scotland*.

*Scott v. Scott*.—*Scotland*.

*Fraser v. Lord Lovat*.—*Scotland*.

*Dunlop, Wilson, & Co. v. Higgins*.—*Scotland*.

*M'Farlane v. Currie* (or *M'Farlane*).—*Scotland*.

*The Caledonian Railway Company v. Hamilton*.—*Scotland*.

*Bonar v. Macdonald*, *ex parte*.—*Scotland*.

*Dykes v. Struthers*.—*Scotland*.

*Maunsell v. White*, and another, Chy.—*Ireland*.

*Paterson v. Dyce*.—*Scotland*.

*Baker v. Tucker*, Chy.—*Ireland*.

*Spalding v. Moore*.—*Scotland*.

*Piers v. Sir H. S. Piers, Bart.*, Chy.—*Ireland*.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, FEBRUARY 26, 1848.

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—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## BILLS BEFORE PARLIAMENT.— POOR REMOVAL BILL.

THERE are two subjects on which the results of modern legislation have been peculiarly unfortunate—the Law of Debtor and Creditor and—the Poor Laws. Perhaps no subjects could be suggested involving interests more important and extensive. The blunders and inconsistencies created by modern acts of parliament in the Law of Debtor and Creditor have been, and may probably again be, frequently commented upon in these columns.

The recent alterations in the Poor Laws are equally deserving of attention. The legislature, under the 4 & 5 W. 4, c. 76, by an enactment extremely objectionable in a constitutional point of view, authorises the Poor Law Commissioners to make rules, orders, and regulations, for the management and relief of the poor, which were to have all the obligatory force of laws. The comprehensive powers thus vested in the commissioners, however, did not prevent the legislature from interfering with the annual experiments which experience does not justify us in describing as improvements. Changes and alterations have been made with so much rashness and so little consideration, that the Law of Settlement is brought to a state of uncertainty and confusion, which renders the appeal to that tribunal appointed by law for the trial of settlement cases—the Court of Quarter Sessions—a matter of mere chance and accident.

The evil, we are forced to admit, has been considerably aggravated by the decisions which the Court of Queen's Bench has, perhaps necessarily, come to, upon the settlement cases submitted to them during the last three or four years. The strict rules of evidence have been applied to examinations taken before country justices, without the presence of any professional man; and the sufficiency of orders and notices drawn up by parochial officers have been determined by a reference to the subtle niceties of special pleading. The pecuniary burthens unjustly imposed upon ratepayers in various localities, by obliging them to maintain paupers who have no claims, legal or moral, upon those who are called upon to support them, have induced those entrusted with the management of parochial affairs to resort, in many cases, to proceedings of an objectionable character. So rarely is a settlement case decided at the Quarter Sessions upon its intrinsic merits, and so often upon mere matters of form, that some parishes adopted the resolution of appealing in every instance in which an order for removal was made against them. It might be quite clear that the pauper had gained a settlement in the appellat parish, and nowhere else, but still the order of removal, or the examinations on which it was founded, might prove informal or defective, and by this means the removing parish would be defeated, and the appellant parish relieved from the burthen of supporting the pauper. So, although it should appear beyond doubt, that the justice was induced to adjudicate that the pauper had acquired a settlement,

under a misconception, or mis-statement of facts, the removing parish persists in supporting the order, under the expectation that the notice of appeal, or the grounds of appeal, may turn out to be objectionable, and the appellant parish be forced to receive the pauper. Such a system, as may be supposed, not only leads to much vexatious and expensive litigation, but produces a disrespect for the law, and a disposition to evade it, which it is deplorable to find manifesting itself amongst those who represent public bodies. Men who are incapable of acting dishonestly in their individual capacities, are parties to proceedings partaking of a fraudulent character in respect of parochial affairs, and justify themselves on the ground that the law does not afford them an adequate security against injustice, and that in self defence they resort to measures more than questionable.

An order was not long since issued by the Poor Law Commission for the instruction of the assistant commissioners in taking fresh averages, which will give some idea of the ingenious and extensive measures adopted by parishes for relieving themselves at the expense of other parishes. It is well known that since the passing of, what is still somewhat inaccurately called, the New Poor Law Act (4 & 5 W. 4, c. 76,) the permanent expenses of the several unions,—that is to say, the cost of the union workhouse establishment, and salaries of the union officers, are defrayed by the various parishes constituting the union, each parish contributing in proportion to its expenditure for the relief of its own poor. Certain parishes, however, were dissatisfied with the proportion which they were called upon to pay, and in order to diminish their liabilities under this head, effected a seeming reduction in the outlay for their own poor, by entering into voluntary subscriptions, and applying the sum thus collected for the relief of the poor through the instrumentality of private individuals, and not through the parish officers. The effect of his scheme of course was, that when the averages for the union were taken, the parish which had thus reduced their apparent expenditure for the poor, were called upon to contribute a smaller sum to the general expenses of the union than they had previously done, and the sum which the parish in question thus escaped paying, was thrown upon the other parishes constituting the union. The Poor Law Commissioners, to prevent the recurrence of similar frauds, have given the following direction

to their officers employed in striking fresh averages :—

“ If it has been shown to the satisfaction of the assistant commissioner, that payments have in any particular parish been made from the highway rate, or from any private rate, or other fund for the purpose of diminishing the costs of the relief of the poor, chargeable to the ordinary poor-rate, and that the averages will be thereby affected, so as to produce injustice to the other parishes in which no such fraudulent or irregular payments have been made, he should examine strictly into the particulars of each such case, and cause the parish officers to explain fully the mode in which such payments have been made; should it then appear that the payments in question are such in their character, and have been so made as to come within the terms of the 28th section of the Poor Law Amendment Act, as a part of the expense incurred by such parish for the relief of the poor, they should be included in the calculation of the averages of the parish to which they relate. But if it appear that the payment in question cannot be deemed to be within the words of that section, it will be proper for the assistant commissioner to report specially the case to the commissioners, and for the latter to determine, whether fresh averages should then be taken, since by such a course the fraud upon the other parishes would be successful.”

How far this direction may prove effectual, time will determine. We only advert to it now for the purpose of exemplifying the nature of some of the frauds which have arisen under the present state of the law. There can be little doubt that frauds of a different description are practised, in reference to settlement cases, not always without the knowledge of parochial officers. When these are discovered, it is the duty of those entrusted with the administration of this branch of the law, to expose and punish them. The harassing and expensive system of litigation, which has grown up with reference to Poor Law appeals, it is the province of the legislature to remedy, and we are glad to find it has been taken up by Mr. Baines, the learned member for Hull, who is not only acquainted with the existing law, but practically familiar with its operation and defects. The bill introduced by Mr. Baines, and which now stands on the order book of the House of Commons for a second reading, is entitled a bill “for Amending the Procedure in respect of Orders for the Removal of Poor Persons in England and Wales, and Appeals therefrom.” The effect of the alterations which it is proposed to make in this branch of the law are rendered sufficiently plain, to those who have any previous acquaintance

with the subject, by the following abstract :—

"1. Instead of a copy of the examination, the removing parish is to send a statement of grounds of removal, and to be confined at the trial of the appeal to the grounds set forth and specified in such statement.

"2. The sessions are empowered to amend the statement of grounds of removal and grounds of appeal (in analogy to the power given to courts of record in civil cases by 3 & 4 Wm. 4, c. 42, s. 23). The amendment to be upon such terms, as to payment of costs or postponement of the trial, or both, as the sessions shall deem reasonable and just.

"3. A power is given to amend the order itself more extensive than that given by the 5 Geo. 3, c. 19, s. 1, though so as to carry out what Lord Kenyon in *Rea v. Chilverscotton*, 8 Tem. Rep. 178, declared to have been, in his opinion, the original intention of that act.

"4. Orders already quashed for any defect in the notice of chargeability or examination, are to be deemed and taken in any proceeding hereafter to have been quashed for defect of form, and not upon the merits, unless the contrary shall have been already adjudged between the same parties."

"5. The decisions of the sessions as to granting or refusing amendments, and as to the sufficiency of the statement of grounds of removal on appeal, are to be final, except where they think fit to state a case for the opinion of the Court of Queen's Bench.

"6. The removing parish is to be enabled to abandon the order at any time, whether before or after the entry of an appeal; costs of the other parish to be taxed by the taxing officer of sessions, either in or out of sessions, and recoverable like costs under 4 & 5 Wm. 4, c. 76."

It appears from the above analysis, that Mr. Baines has, no doubt judiciously, confined his attention to an endeavour to correct the admitted evil arising from the decision of settlement cases at Sessions upon technical grounds, and not upon merits. In removing this blot from the administration of justice, we trust he will be cordially supported by the government, without whose assistance it is extremely difficult for any independent member, however able or well qualified, to carry through parliament a measure of a practical nature, involving nothing beyond an amendment of the law. Under the Poor Laws Administration Act of last session, (10 & 11 Vict. c. 109,) this important branch of the executive is placed under the control of persons to whom the public look with confidence for great improvements in the administration of the law. Not only must useless litigation be prevented, but unnecessary offices abolished, and at a time when the exigencies of the country are supposed to

require the imposition of additional taxes, pressing with peculiar and unequal severity upon those engaged in the professions and in trade, reductions should be made in the expenses of administering the Poor Law, to the greatest degree compatible with the healthful maintenance and well-being of the poor.

## COURTS OF PETTY AND SPECIAL SESSIONS BILL.

By the 10th section of this bill, a clerk is to be appointed for each of the new courts to be called "The Court of Special Sessions of the Peace," and, in all future appointments, the clerk of the Court of Petty Sessions shall act as the clerk of the Court of Special Sessions for the same division. The appointment is to be made by the justices of the peace residing in, or carrying on business in, the sessional division for which such appointment shall be made. The clerk is to hold his office during the pleasure of the justices, but he is not to be removed, except by the majority of the justices, attending a meeting for the purpose.

In boroughs, where a separate commission of the peace is granted, the clerk of the Court of Special and Petty Sessions shall hold their offices in the same manner as the clerk to the justices of the borough.

The bill does not set forth any particular qualification of these clerks, but we presume that the clause will be amended by rendering it necessary that he should be an attorney of one of the superior courts.

## DR. ADDAMS AND THE BAR AT DOCTORS' COMMONS.

THE extraordinary proceedings in the Arches' Court in the case of *Geils v. Geils*, the observations made by Dr. Addams in the progress of the argument, and the imputations directed against him of a violation of professional etiquette, have led to a meeting of the Bar practising at Doctors' Commons. The result has been the publication of an advertisement in the daily newspapers, which, in whatever light it is considered, must be pronounced as curious and remarkable a document as any that has lately been submitted by a body of professional men to the public.

At a meeting of the Doctors' Commons Bar, at which the Queen's Advocate presided, it appears, it was unanimously agreed



that a letter should be written to Dr. Addams, upon the subject of his conduct in the case of *Geils v. Geils*, containing extracts from the short-hand writer's notes of his speech, reflecting on the Bar, and that Dr. Addams, if he admitted their correctness, should be requested to explain or apologise for having used them. The committee to whom the duty was entrusted of communicating with Dr. Addams, accordingly transmitted to him the following extract from his speech :—

"Why I did in that case what I do in 19 out of 20, what I have done notoriously in every case where I take any interest, or I think it makes it worth while, I drew the allegation myself. Has the proctor any reason to complain—to find fault? I should think not. It relieves him of responsibility. It is suggested there is something unprofessional in that. If so, I have been going on for the last 30 years without knowing anything about it, and particularly with the knowledge of the counsel in the case, who have constantly put their names and taken their fees, and taken their credit without responsibility, or trouble, or consultation, or anything else, and they have been getting their speeches by heart in their chambers, which they have come and mouthed out in court, while I have been getting up the case.

"I put myself up as a model. I do. I think I know how to draw pleas and conduct a case infinitely better than anybody else in this court. Undoubtedly, I am ready enough to admit that I am a minnow among tritons elsewhere, but I am really a triton among minnows swimming in these little waters. I think I have a right to take some credit to myself in these narrow walls. I do set myself up here."

In reference to this extract, the committee intimated to Dr. Addams their conviction that (if his words were correctly reported) he would perceive, on calmly perusing them, that they were calculated greatly to offend the body of professional men to whom they applied, and that it was imperative on the bar not to pass them by without notice. They doubted not he would feel it consistent with his own position to avail himself of this opportunity to explain or apologise for them.

Dr. Addams, upon receiving this communication, placed himself in the hands of three of his friends, Mr. Anderdon, Q. C., Dr. Robinson, and Mr. A. J. Stephens, and those gentlemen, it seems, suggested to him that, inasmuch as the two selected extracts from his reply in *Geils v. Geils* were treated by the resolutions as "reflecting upon the Bar," and it was not his design by those passages from his speech to reflect upon the Bar in general, he would do right

to express his regret that they should be considered by that body capable of such a construction, and to disclaim any intention of treating the Bar collectively with disrespect.

They also entirely concurred as to the propriety of his declaring that the language in question was provoked by the offensive language of the opposite counsel, and that he considered it to have been fully justified, so far as regards them personally and individually.

In conformity with the advice so given by his friends, Dr. Addams, in his reply to the committee expresses himself as follows :—

"I therefore have to express my regret that the extracts to which you have called my attention should be considered by the bar capable of being construed as reflecting upon that body, and to disclaim any intention of treating the bar collectively with disrespect.

"At the same time I beg to declare that the language in question was provoked by the offensive language of the opposite counsel, and that I did then, and do now, consider it to have been fully justified so far as regards them personally and individually."

At a meeting, held on Saturday last, the Doctors' Commons Bar declared they accepted the apology offered by Dr. Addams, but at the same time came to the following resolutions :—

"That in the opinion of this meeting it is unprofessional for the pleadings, answers, and interrogatories to be drawn by the advocate alone, and without any communication with, or intervention of, the bar.

"That it is the opinion of this meeting that it is unprofessional for the advocate, without the intervention of the proctor, to communicate during the progress of a cause with the witnesses about to be examined on the subject of their evidence."

How the profession generally, or the public, may view this correspondence, and the proceedings of the learned advocates of Doctors' Commons upon this occasion, it would be presumptuous for us to anticipate.

It is impossible, however, not to perceive, that subjects of very unequal importance have been mingled together, and a remarkable prominence given to that which appears to be most insignificant. The vain-glorious self-laudation in which Dr. Addams indulged in a moment of excitement, and avowedly under feelings of irritation, may, in our judgment, have been passed over by his learned brethren with a smile, and ought certainly never to have been made the sub-



ject of a grave demand for explanation. The course of professional conduct which the advocates in their resolutions condemn,—namely, drawing pleadings without consulting other advocates engaged in the cause, (which we presume is what is meant,) and communicating with witnesses without the intervention of a proctor,—involves considerations of great importance to the profession and the public, but on these points Dr. Addams has not given, and does not seem to have been required to give, any explanation. The circumstances which could have induced an advocate engaged in such extensive business as Dr. Addams, to adopt a practice at once so unusual and inconvenient, must be publicly known before his conduct in this respect is determined upon.

### LEASE AND AGREEMENT REQUIRING A DOUBLE STAMP.

IN a recent case, it appeared by a writing, that *D.* had purchased four messuages for the residue of a term, in one of which messuages *A.* resided, and it was agreed that *A.* should continue to reside in that messuage during the residue of *D.*'s interest in the term, if *A.* should so long live, at the yearly rent of 1s.

*D.* further agreed to assign all his interest in the premises so purchased to *A.*, on payment of 140*l.* within a stated period.

This was held to be both a lease and an agreement, and consequently requiring an agreement as well as a lease stamp, because the lease and the agreement comprehends distinct subject matters: the lease being for one house and the agreement comprising four houses.<sup>a</sup>

### ATTORNEYS' ANNUAL CERTIFICATE DUTY.

THE Petitions for the Repeal of the Annual Certificate Duty continue to pour in. We subjoin a list of the places from whence they came, in alphabetical order, with the names of some of the Members of Parliament who presented them. It will be useful to collect all the names, in order that when the question is mooted the members may be applied to.

We trust there will be no premature discussion. We recollect when the present Income Tax was first imposed, and arrange-

ments were made for attending Sir Robert Peel, then the prime minister, the parties who had promoted one of the provincial petitions got the subject brought forward without communicating with the law societies in town and country, and consequently the discussion was cut short in a unsatisfactory way, and the prime minister, instead of receiving the intended deputation, referred to the debate which had taken place as disposing of the question.

The proper course will be to arrange a convenient time for bringing on the subject, and give due notice to the persons having charge of the petitions, and the members who presented them. Reasons against the tax should be drawn up and circulated amongst the members of the house.

|                              |                              |
|------------------------------|------------------------------|
| Abergavenny.                 | Lancaster.                   |
| Aberystwyth, <i>Col.</i>     | Llandilo.                    |
| <i>Powell.</i>               | Market Drayton.              |
| Ashton-under-Lyne.           | Molton, South.               |
| Barnard Castle.              | Mosmouth.                    |
| Barnsley, <i>Mr. Cobden.</i> | Newcastle-under-Lyne         |
| Barton-on-Humber.            | Newton Abbott, <i>Sir J.</i> |
| Barnstaple.                  | <i>Y. Buller.</i>            |
| Bawtry.                      | Northallerton.               |
| Bideford, <i>Mr. Brem-</i>   | Norwich.                     |
| <i>ridge.</i>                | Retford, East.               |
| Bolton, <i>Dr. Bowring.</i>  | Ruthin.                      |
| Boston, <i>Mr. Cabbell.</i>  | Shaftesbury.                 |
| Bradford, <i>Col. Thomp-</i> | Sheffield.                   |
| <i>son.</i>                  | Shrewsbury.                  |
| Bridgewater.                 | Somerton and Lang-           |
| Brighton.                    | port.                        |
| Chard.                       | Southwell.                   |
| Colne.                       | Stamford.                    |
| Crickham.                    | Stone.                       |
| Crowle.                      | Sudbury.                     |
| Chichester.                  | Sutton Coldfield.            |
| Cheltenham.                  | Tenterden.                   |
| Dartford.                    | Tenbury.                     |
| Dudley.                      | Thirsk.                      |
| Easingwold.                  | Torrington.                  |
| Ely.                         | Towcester.                   |
| Epworth.                     | Uttoxeter.                   |
| Exeter.                      | Wakefield, <i>Mr. San-</i>   |
| Gainsborough.                | <i>dars.</i>                 |
| Gosport.                     | Walsall.                     |
| Halstead.                    | Wareham.                     |
| Haverfordwest.               | Warrington.                  |
| Hereford.                    | Whitehaven.                  |
| Honiton.                     | Wells.                       |
| Horbury and Ossett,          | Wimborne, <i>Mr. Banks</i>   |
| <i>Mr. Sandars.</i>          | Weston-on-Sea.               |
| Huddersfield.                | Wincanton.                   |
| Kirton-in-Lindsey.           | Wolverhampton.               |
| Kidderminster.               | Wrexham.                     |
| Kingston-on-Hull.            |                              |

Almost all the other petitions were presented by Mr. Headlam.

About 20 petitions have also been presented from individual members of the profession.

••• For further information, see the *postscript*.

<sup>a</sup> *Lovelock v. Franklyn*, 8 Q. B. 371. And see *Wharton v. Walton*, 7 Q. B. 474.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE chief advantage to the profession which we expect will result from this association (as we have often pointed out) is, the *union of the Country with the Town members*. The Incorporated Law Society comprises the great majority of the London firms of solicitors. In the country a small proportion only have joined the society. Although the annual subscription is but 1*l.*; the admission fee, until recently, was 15*l.*, and is now 10*l.* Those who seldom come to town, are, of course, not induced to make this payment, for, although they might receive the publications of the society, they have no advantage from its extensive library, nor the information from parliament and the courts, daily collected and arranged in the Hall and Offices in Chancery Lane; nor have their clerks the benefit of resorting to the lectures and the reading and discussion rooms.

The new association therefore seems well devised for uniting at a small annual expense, the country with the town practitioners, and enabling the committee of management effectually to communicate with a large body of the profession who, in joining the association, have given satisfactory proof of the interest they feel in promoting the general good.

We trust that this principle of union amongst the *whole* profession as one body, wherever resident, and in whatever department of practice, whether in the courts of law or equity or otherwise, will be ever borne in mind. We are glad to observe the good understanding which evidently subsists between the New Association and the Incorporated Law Society, as shown abundantly in the several statements which have been published, and especially in the one now laid before our readers, and to which we would call their particular attention.

### THIRD ADDRESS OF THE COMMITTEE OF MANAGEMENT.

Our readers are aware that this association was formed "for the purpose of promoting the interests of suitors, and the better and more economical administration of the law; of obtaining the removal of the many and serious grievances to solicitors, and through them to the suitors; and of maintaining the rights and increasing the usefulness of the profession."

"The committee of management, on the 7th May last, issued an address to all the attorneys and solicitors of England and Wales, explain-

ing the objects of the association. In consequence of this address, they received the names of a considerable number of members, but not sufficient to justify at that time the adoption of proceedings in furtherance of the various purposes of the association. They, therefore, circulated, in the month of August last, another statement, with a letter personally addressed to each member of the profession.

"This second appeal produced a large accession of members both in town and country, and thereupon a meeting of the committee of management was held on the 29th October, when, advertent to the number and respectability of gentlemen who had agreed to join the association, and the fair probability that when its objects were better known and appreciated, it would be still more extensively supported, the committee felt justified in declaring that the association was then fully formed; and a special committee was appointed to consider the objects which should be carried out forthwith, and to report on the course of management which should be adopted.

"The special committee made their report on the 22nd of November, and the committee of management held a further meeting on the 11th December, at which the report was received and adopted; and the committee now consider that the time has arrived for proceeding to carry into effect such of the objects stated in the address of the 7th May as appear under present circumstances to require the earliest attention.

"Those objects are—

"1st. To extend the association itself, and to promote the establishment of district or local law societies throughout the kingdom.

"2nd. To collect full information from the profession at large, and every other available source, on the points adverted to in the Address of May, 7, 1847, and on all others which it may be desirable for the committee of management to bring under the consideration of parliament, whether affecting the general administration of the law, or the peculiar grievances of the profession; and more especially to obtain accurate statements of such facts as it may be important to establish before a parliamentary committee; and

"3rd. To take such active measures in reference thereto as may be judged desirable.

"The attainment of the first of these objects must depend chiefly on the exertions of each member of the association, in his own district or neighbourhood, and will be best accomplished by the formation of district sub-committees, specially charged with this particular department of labour. The gentlemen who have already joined the association from the counties forming the Northern Circuit being sufficient, both with regard to their numbers, residence, and means of inter-communication, to undertake this important duty within that

\* The names of the committee of management are stated in the advertisement.

district, a sub-committee, consisting of all the members of the committee of management resident in those counties, has been appointed for such of the purposes of the association as can be effected locally; and Mr. John Sudlow, jun., of Manchester, has been appointed the honorary secretary of the association for that part of the kingdom. The committee of management, while they have seen with satisfaction such an accession of gentlemen from many other parts as affords the prospect of other districts being speedily furnished with distinct sub-committees and secretaries for local purposes, conceive that, for the present, the progress of the association will be best promoted by the appointment of one committee for the rest of the kingdom, with power to add any members of the association to their numbers. This power will enable them to associate with themselves those gentlemen in all parts of the country who may be willing to assist in paving the way for the formation of sub-committees, and the appointment of provincial secretaries in other quarters, an object which the committee of management deem of great importance, and are desirous to accomplish as soon as circumstances will permit.

"The second object opens a very extensive field, which can be cultivated only by a judicious sub-division of labour. With this view, sub-committees of inquiry have been formed, whose attention is to be directed to the following subjects, viz. :—

1. Parliamentary proceedings.
2. Common law.
3. Equity.
4. Conveyancing.
5. The office and status of attorneys, their rights and privileges, particularly as to offices of distinction, the right of advocacy, and the restrictions of the Inns of Court;
- and 6. The grievances of the profession, particularly unjust and unequal taxation, encroachments of unqualified persons, fees, and emoluments.<sup>b</sup>

"It will be the duty of each sub-committee to collect the most extensive, minute, and accurate information upon the subjects delegated to their care, and to report the result to the general committee.

"While these inquiries are in progress, it will be the province and duty of the committee of management to attend to the several bills which may be introduced into parliament affecting the administration of the law, and to offer to such measures support or opposition, as circumstances may require.

"The sub-committees will meet during the session of parliament, and at such other times as may be found expedient, and they are empowered to invite the assistance of any members of the association; and in cases, where they are not specially authorized to act, to report their recommendation to the committee of management.

"Whilst, for the present, the proceedings of

the association will be principally directed to the extension of provincial law societies, and the increase of the numbers of this association; to the collection and communication of information on the state and interests of the suitors as connected with the due administration of justice; to the careful preparation of materials for an appeal to the legislature, and of evidence to support it; and to the bills which may in the meantime be introduced into parliament,—they feel that two other objects have peculiarly strong claims on the attention of the profession and the public. These are, the *education of persons intending to become solicitors*, and the *supervision of the profession*. The committee conceive that an improved system of professional education forms the true basis for the honour and usefulness of the profession; and the maintenance of an effective supervision affords to the public the best security against the abuse of professional power and privileges.

"But as both these objects have received, and continue to engage, the careful attention of the Incorporated Law Society, (a body intrusted both with the examination and registration of attorneys and solicitors, and being armed with chartered rights and powerful influence, possessing the best means of effectually promoting them,) the committee of management conceive that they will contribute more to advance those great objects, by a steady and cordial support of the exertions of the Incorporated Law Society, than by any separate course of action with regard to them.

The committee deem it no more than an act of justice to express their sense of the invaluable services which have been rendered both by the council of the Incorporated Society, and by a large number of its members, in the establishment of this association. It has been through the friendly aid and sanction of the Incorporated Society collectively, and of many of its members individually, that the association has been enabled to surmount some of the chief difficulties which always attend the organization of an extensive body, and to establish itself on a permanent footing.

"To the same liberal spirit the committee of management are indebted for the invaluable aid, which, up to this period of their labours, the Incorporated Law Society has allowed them to receive from their able and indefatigable Honorary Secretary, Mr. Maugham. In reliance on this spirit, the committee of management recently ventured to request the council of the Incorporated Law Society to allow the continuance for some further time, of Mr. Maugham's services; and have the satisfaction of stating, that the council has kindly consented to those services being extended up to the first annual meeting of the association on the 19th April, 1848.

"The extent of labour, however, required from the secretary of this association, which is already very considerable, and will go on rapidly increasing, must soon render it impossible for the same gentleman to undertake the secretaryship of both institutions; and amongst

<sup>b</sup> The names of the members of these several sub-committees are stated in the advertisement.

the duties which will require attention at an early period after the annual meeting of the 19th April, will probably be the very important one of selecting a secretary of the association, whose station will be in the metropolis and on whose talents, energy, and judgment, the future success of the association will in no small degree depend.

"The members of the profession, as well those who have already enrolled themselves in the association, as those who have not joined it, are earnestly invited to state their views on all subjects within the scope of the association. The committee feel confident that this appeal will be understood and answered in the same spirit in which it is made. An association is entitled, as they cannot but think, to the efficient co-operation of the profession, which has been established not only to redress professional grievances, which have been long and justly complained of, but to introduce sound and salutary reforms into the administration of justice,—reforms equally beneficial to the suitor, the solicitor, and the public,—to those who are engaged in the practice of the law, and those who may have occasion to claim its assistance or protection."

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From Jan. 25th, to Feb. 18th, 1848, both inclusive, with dates when gazetted.*

Duncalfe, John Thomas, Walsall. Feb. 4.  
Falconar, John Brunton, Newcastle-upon-Tyne. Feb. 4.  
Jones, William, Newtown. Feb. 11.  
Somerville, Stafford Baxter, Doncaster. Feb. 1.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Jan. 25th, to Feb. 18th, 1848, both inclusive, with dates when gazetted.*

Behb, Joseph, and James Rose, 12, Argyle Street, Regent Street, Attorneys and Solicitors. Jan. 25.

Fiske, Robert, and Robert Welham Clarke, Beccles, Attorneys, Solicitors, and Money Scriveners. Feb. 15.

Griffiths, John, and John Hollings Griffiths, Hereford, Attorneys, Solicitors, and Proctors. Feb. 11.

Matthews, John, and James Layton M'Rae, 2, Arthur Street West, London Bridge, Attorneys and Solicitors. Feb. 11.

Motteram, James, and Thomas Knowles, Birmingham, Attorneys and Solicitors. Feb. 11.

#### PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries Act.*

Stiles, Henry, of Northleach, in and for the county of Gloucester. Feb. 1.

#### NOTES OF THE WEEK.

##### MR. WARREN'S LECTURES.

We are glad to learn that Mr. Warren will deliver Four Lectures, in the Hall of the Incorporated Law Society, on the Professional, Moral, and Social Duties of Attorneys and Solicitors. The recent discussions relating to Legal Education, and the improvements sought to be effected in the profession by the various law societies, render such a course of lectures peculiarly well timed. We understand, that all the subscribers to the lectures of Mr. Miller, Mr. Maynard, and Mr. Nalder, (about 200,) will be admitted gratis to these additional lectures. The members of the society will of course have a right to attend, and a liberal arrangement will be made for the admission of others. The lectures will be delivered in Trinity Term.

Mr. Warren's standard work on "Law Studies" proves him to be eminently fitted for the task he has undertaken.

##### COUNTY COURTS.

The New County Courts have occasioned great changes: will they do good? The large fees payable on taking out a summons, are looked upon by the suitors as a grievance, and the costs are larger than those in the old Northern County Courts; they are attended by solicitors who get little by their day's exertion occasionally by barristers.

As a substitute for the New County Courts, some attorneys have advertised the collection of debts at 1/., some 10s. per cent., per debt, but this is small remuneration for professional men.

#### PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

##### House of Lords.

##### NEW BILLS.

Clergy Offences.—Bishop of London.  
Audit of Railway Accounts. For 2nd reading.—Lord Monteagle.

##### House of Commons.

##### NEW BILLS IN PROGRESS.

County Rates. For 2nd reading.—Mr. Frewen.

Jewish Disabilities Relief. In Committee.—Lord John Russell.

Removal of Poor. For 2nd Reading.—Mr. Baines.

Administration of Justice out of Sessions. (No. 1). In Select Committee.—Attorney-General.

Special and Petty Sessions. In Select Committee.—Attorney-General.

Protection of Justices. In Select Committee.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). In Select Committee.—Attorney-General.

Agriculture Tenant-right. For 2nd reading.  
 Mr. Anstey.  
 Roman Catholic Relief. In Committee.—  
 Mr. Anstey.  
 Public Health. For 2nd reading.—Lord  
 Morpeth.  
 Passengers by Sea. For 2nd reading.

NOTICES OF NEW BILLS.

Game Laws Amendment. Mr. Colville.  
 Vacating Seats of Insolvent Members.—Mr.  
 Moffatt.  
 Imprisonment before Trial.—Lord Nugent.  
 To Prevent Bribery at Elections.—Sir J.  
 Pakington.

To Establish an Appeal in Criminal Cases.—  
 Mr. Ewart.  
 To Repeal the Punishment of Death.—Mr.  
 Ewart.

LAW APPOINTMENT.

Walter Coulson, Esq., of the Society of  
 Gray's Inn, has been appointed to succeed Mr.  
 Bethune, Parliamentary Counsel to the Home  
 Office. His duty is to prepare the bills origi-  
 nating with the government, and to revise, or  
 report upon, any bills brought before parlia-  
 ment, and referred to him by the Secretary of  
 State.

RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

*Eardley v. Owen.* Dec. 10th & 22nd, 1847.

PORTION.—FURNITURE.—DEBT.—DEVISE.

*A devise of a life interest in real property to B., who was under covenant to make the portion or fortune provided for C. equal to that provided for B., held to create a debt equal in amount to the value of the devise, payable out of all A.'s real estate, under a general charge for the payment of his debts. But a bequest of furniture to B. held not to fall within the definition of the fortune or portion provided for her, and, therefore, not to create a similar obligation.*

THE object of this suit was to have it declared that the real estate of a Mr. Owen Bennion, specifically devised by his will, was liable to a charge equal in amount to the value of certain parts of that estate devised to one of his daughters, Elizabeth Latham. The plaintiffs claimed through another daughter, named Sarah Owen. The foundation of their claim was a covenant contained in the settlement made on the marriage of Sarah Owen, for whom a portion of 1,500*l.* was provided, that "if the testator should make any grant by way of fortune or portion in money or value to his daughter Sarah, the husband of the said Sarah Owen, his executors or administrators, should pay to Elizabeth Latham such other sum of money or value as would make the portion or fortune of Elizabeth Latham equal to the portion or fortune given to Sarah. This settlement bore date in January, 1800. Sarah Owen married in the year 1809, when the sum of 1,500*l.* was settled upon her. Owen Bennion, the father, died in the year 1829, having charged all his real estate with payment of his debts, and having devised certain of them on trust for Sarah Owen for life, and after her death for her children. He also bequeathed to her certain articles of furniture.

The question in the cause was, whether these devises and bequests amounted to such a gift to Sarah as by the terms of the covenant in Elizabeth's settlement would draw after it the obligation to give an equal value to her, and whether their value could be recovered under the charge for the payment of debts.

Mr. Kindersley, Mr. Turner, Mr. Roupell, Mr. Anderdon, Mr. Peed, Mr. Haldane, Mr. Goodeve, Mr. F. J. Hull, and Mr. S. C. Hall, appeared for the different parties.

The points urged in opposition to the bill were, that the settlement referred to a gift of personalty, not to devises of realty; that the words portion or fortune would properly embrace the whole estates devised to Sarah and her children, if they were applicable in the present case at all, whereas the bill claimed only an equivalent to Sarah's life interest, and that the claim could not be considered as coming within the charge for the payment of debts, because it did not exist at the testator's death, and the debts would have to be deducted before the value of the gift to Sarah, which was the measure of the plaintiff's claim, could be ascertained.

*Lomur v. Wright*, 2 M. & K. 69; *Morse v. Tucker*, 5 Hare, 79; *Earl of Bath v. Earl of Bradford*, 2 Ves. 587; *Winchdt v. Logan*, 7 Bli. N. S. 1, were referred to.

Lord Langdale, after stating the facts of the case, said it was clear that the devise of Sarah Owen did give her more than was given to Elizabeth. The question was, whether this greater gift ought to be considered as a portion or fortune, and provision made by the father out of his estate for his daughter, in addition to the provision made on her marriage. He thought that it must be so considered; and, therefore, that by his covenant he was bound to make an equal provision for his daughter Elizabeth. But he did not think that the gift of furniture came within the definition of fortune or portion. Then the testator having by his will charged his estate with the payment of

his debts, another question was, whether this was a debt charged upon his estate by his will. That such an obligation as this created a debt was not disputed; but it was said that, as the charge of the debt was made by the same will which contained the gift to Sarah, it could not be the testator's intention that this debt should be a charge on the lands so devised. But he did not think it could be supposed that the testator, when he used these words, had in his mind every obligation he was under. He meant to discharge them all. Therefore, he thought that the case did come within the charge. There might be some difficulty in ascertaining the exact value of the interest given to Sarah, but he did not think it insuperable. As to this there must be a reference.

### Vice-Chancellor of England.

*Exparte Worcester College, Oxford.* Jan. 28, 1848.

#### PETITION.—INVESTMENT OF PURCHASE-MONEY.—COSTS.

*Under the Birmingham Railway Act, the Court is not authorized in making the company pay the costs of investing in the funds the money paid by the company for the purchase of lands.*

THIS was a petition for the investment of a sum of 400*l.* in the 3 per cent. consols, the purchase money paid by the Birmingham Railway Company for certain lands belonging to the College. The petition prayed, also, that the company might be ordered to pay the costs of the investment.

Mr. M. Richards appeared on the petition, and contended that, as the Birmingham Railway Act expressly provided for the costs of investing purchase-money in land, it ought also to be taken to extend to investment in the funds. The words of the 39th section, coupled with the 42nd, authorized such a conclusion. By the 39th section it was provided "that money which had been paid into court to be laid out in the purchase of other lands to be conveyed to the same uses might, in the meantime and until such purchase could be made, by order of the court be invested by the Accountant-General in the funds." By the 42nd section it was provided, "that where, by reason of any disability or incapacity of any party entitled to any lands to be taken or used or in respect of which any compensation or satisfaction should be payable under the authority of that act, the purchase-money for the same, or the money paid for such compensation or satisfaction, should be required to be paid into the Bank of England, to be applied in the purchase of other lands to be settled to the like uses, in pursuance of that act, it should be lawful for the said Court to order the expenses of all such purchases, or so much of such expenses as the said Court should deem reasonable, together with the necessary costs and charges of obtaining such order, to be paid out of the monies to be received by virtue of that act; and the said

company should from time to time pay such sums of money for such purposes as the said Court should direct." The cases of *Exparte Northwick*, 1 Y. & Coll. 166, and *Exparte Marshall*, 1 Phillips, 560, although not directly in point, did in principle authorize the granting what was contended for in the present application.

Mr. Speed opposed the petition.

The Vice-Chancellor said, he had no power to deal with the fund, except what was given by the act: that had been repeatedly decided. The Court of Chancery had nothing to do with abstract rights. If an act of parliament was passed which gave the rule to go by, go by it you must, and make no rule for yourself. He was aware that in practice that had not always been attended to, and that the decisions had not been uniform. On one occasion, where in deciding he had confined himself strictly to the words of an act of parliament, and in another case, where he had, in order to do what he considered justice, gone beyond what was strictly prescribed by an act, both his decisions had been overruled by Lord Lyndhurst. However, in the present case, what was asked for did not strictly come within the words of the act which had been referred to, and he could not therefore grant the application.

*Ousby v. Harvey.* Feb. 11, 1848.

#### CONSTRUCTION OF WILL.—GIFT OF INTEREST ON STOCK.—ABSOLUTE BEQUEST.

*A bequest to S. H. of the interest arising out of 1,500*l.* stock for her during her life, and at her decease to descend to her heirs male or female; the said 1,500*l.* to be by no means sold whatsoever, except failure of issue, and then to descend to C. H. and his heirs for ever.* Held, that S. H. took the 1,500*l.* absolutely.

THOMAS HARVEY, by his will dated the 7th July, 1810, devised as follows:—"I do bequeath to Sophia Harvey, my granddaughter, daughter of my son Charles Harvey, the interest arising out of 1,500*l.* stock, 3 per cent. consols, for her during her life, and at her decease to descend to her heirs male or female, by paying to her uncle, William Harvey, 10*l.* per year out of the said interest during his life, but the said 1,500*l.* stock to be by no means sold whatsoever, except failure of issue, and then to descend to my son, Charles Harvey, and his heirs for ever, for the safety of which I nominate Charles Harvey, the father of the said Sophia Harvey, her guardian during his life, and before his decease to choose two other guardians for the fulfilment of this my bequest; of what other monies and goods, &c., I may possess at my decease, I leave at the sole disposal of my son, Charles Harvey, to distribute equally among the children, whom I nominate my sole executor."

Mr. Swinborne, in support of the bequest to Sophia Harvey, contended, that it constituted an absolute gift to her of the 1,500*l.* That if the same words had been used in a gift of realty, they would have created an estate tail general; Lord *Verulam v. Bathurst*, 13 Sim. 374.

Mr. Welford, contra.

The Vice-Chancellor said, he did not know how he could take away the 1,500*l.* from Sophia Harvey; from the wording of the will it appeared to him to be an absolute bequest to her. As to the latter part of the will, no sense could be made out of it.

Vice-Chancellor Knight Bruce.

*Raistrick v. Elsworth.* Dec. 23, 1847, and Jan. 27, 1848.

PRACTICE.—DISMISSAL OF BILL.

*Four of the defendants answered; an order to amend was served upon them, with a tender of 6*s.* 8*d.* costs; the amendments required an answer, but no subpoena was served: Held, that the defendants were entitled, upon the expiration of the usual time for filing replication, &c., to move to dismiss.*

IN this case, upon a motion to dismiss, Mr. Berrey obtained the opinion of the Master of the Rolls and Vice-Chancellor Wigram upon the following statement, signed by the counsel for the respective parties:—

On the 29th Oct. 1847, the defendants Elsworth, Musgrave, Webster, and Hinings, four of the six defendants to the original bill being in a position to move to dismiss the bill for want of prosecution, gave a notice of motion for that purpose for the first day of last Michaelmas Term, which motion stood over at the plaintiff's request. Before that motion was heard, the plaintiff's solicitor obtained from the Master the following order to amend. [The order, dated the 5th November, 1847, was here set out, it being, that the plaintiff should be at liberty to amend his bill in this cause on payment of 6*s.* 8*d.*] This order was served upon the solicitors of the said four defendants, with a tender of 6*s.* 8*d.* costs, which tender was refused. In pursuance of this order, the plaintiff amended his bill, by adding parties defendants, and by introducing additional statements which rendered a new engrossment necessary, and on the 12th Nov. 1847, he gave the following notice to the solicitor of the said four defendants. "In Chancery. *Raistrick v. Elsworth.* I have this day filed an amended bill herein, dated this 12th day of November, 1847. Yours, &c., Edward Flower, agent for the above-named plaintiff. Messrs. W. R. & Co., solicitors or agents for the above-named defendants." The amended bill required an answer to the amendments from the said four defendants, and also an answer to the original and amended bill from the new defendants, and the two other defendants to the original bill, and who have not yet answered that bill. No subpoena to answer the amended bill was served on the said four defendants, and the plaintiff solicitor not having filed a replication or set down the cause on the bill and answer, the solicitor of the said four defendants gave notice of motion for the 8th December, 1847, to dismiss the bill for want of prosecution, which motion, after having stood over at the request of the plain-

tiff's counsel, was accordingly made on the 23rd December, 1847. The question is, whether the said four defendants were, under these circumstances, entitled to move to dismiss the bill for want of prosecution, under the 39th clause of the 16th rule of the Orders of May, 1845.

W. Elmsley for the said four defendants.

E. M. Harrison for the plaintiff.

Mr. Berrey gave to the Vice-Chancellor the following reply:—"The Master of the Rolls and Vice-Chancellor Sir James Wigram are both decidedly of opinion, that the defendants having fully answered the original bill, if the plaintiff required an answer from them to the amendments, he was bound to have paid them 20*s.* (the ordinary costs) and to have served them with subpoenas to appear to and answer the amended bill; and that he not having done so or filed a replication, the defendants are entitled to move to dismiss the bill for want of prosecution." Mr. Berrey referred also to *Cooke v. Davis*, 1 Turn. & Russ. 309, and *Bramston v. Carter*, 2 Sim. 458.

The bill was afterwards, by arrangement, allowed to remain, upon the plaintiff paying the costs of the motion.

*Ex parte Ward, Re Nottingham and Lincoln Railway.* Jan. 21, 1848.

APPORTIONMENT OF PURCHASE-MONEY.

*A lessor and a lessee, entitled to renewal, agreed with a railway company for the sale to them of a piece of land for a specific sum, which was to include compensation for damages done by the severance of the land from other land belonging to the lessee. The court declined, upon the petition of the lessee, to apportion the sum between him and the lessor.*

THE petitioner in this case (W. H. Ward) was entitled, under a lease of the Dean and Chapter of Lincoln Cathedral, dated in November 1845, to a term of 21 years from the 12th of August preceding, in a small piece of ground, on which a dining-room and entrance-hall to the petitioner's house were erected. By the lease it was covenanted by the petitioner not to assign the lease, &c. except by will or with the consent of the Dean and Chapter. The land being required for the purposes of the above-mentioned railway, an agreement for the sale thereof, dated the 7th April, 1846, was executed by the petitioner, the agents for the company and the Dean and Chapter. By this agreement the sum of 1,760*l.* was agreed to be paid by the company, that sum including compensation for damages, by severing the property purchased from the other property of the vendors, or by otherwise injuriously affecting such other property, &c. The 1,760*l.* was duly paid into a bank at Lincoln, and the purchase was completed; the land was conveyed, and the company entered into possession. In consequence however of the difference between the petitioner and the Dean and Chapter as to the apportionment of the purchase-money, the



company caused the said sum of 1,760*l.* to be paid into the bank in the name of the Accountant-General. This petition was then presented by Ward, praying the apportionment and payment of the money between himself and the Dean and Chapter.

*Bacon and Freeling*, for the petitioner, relied upon the 74th section of the Land Clauses Consolidation Act.

*R. Palmer*, for the Dean and Chapter, opposed the application.

*Speed* for the railway company.

The *Vice-Chancellor*. I have too much doubt upon the authority of the Court to apportion the money in a case like the present, to make it proper that I should be active in doing so. I must therefore refuse the petition, but without costs.

The money was then, by consent of the parties, directed to be invested, and the dividends of so much as represented the lease to be paid to the petitioner during the remainder of the 21 years' term, or till further order, without prejudice to any question; *Mr. Ward* undertaking, while receiving such dividends, to pay the rents reserved by the lease.

#### Queen's Bench.

(Before the Four Judges.)

*Sutton v. Swanwick and another*. Sittings after Hilary Term, 1848.

ACTION AGAINST MAGISTRATE.—NOTICE OF ACTION UNDER 43 GEO. 3, C. 99, S. 70.

*A. was committed to prison by B., under the 43 Geo. 3, c. 99, on the 8th September, 1845, and was discharged on the 8th of February, 1846, having been in prison 154 days. Section 70 enacts, that for anything done in pursuance of the act an action must be brought within six calendar months next after the fact committed, and requires notice of action to be given, stating the cause or causes of action. A notice of action was given, stating the plaintiff was imprisoned for 150 days, and the action was commenced on the 6th August, 1846.*

*Held, that A. was bound by the allegation as to time in his notice, and inasmuch as it did not appear that the action was commenced within six calendar months after the expiration of the 150 days, he was nonsuited.*

This was an action of trespass and false imprisonment. Under the 43 Geo. 3, c. 99, the plaintiff was committed to prison by the defendants, commissioners of assessed taxes. The plaintiff was committed to gaol on the 8th of September, 1845, and was discharged out of custody on the 8th of February, 1846. Section 70 of the statute enacts, that in any action brought for anything done in pursuance of the act, such action shall be commenced within six calendar months next after the fact committed, and not afterwards, and no writ or process shall be sued out for the commencement of such action until one calendar month next after notice in writing shall have been given, in which notice shall be clearly and

completely contained the cause and causes of action. The notice given by the plaintiff stated that the plaintiff had been imprisoned for a long space of time, to wit, for the space of 150 days. The actual time the plaintiff was in prison was 154 days, and the action was commenced on the 6th of August, 1846. The case was tried before *Coltman, J.*, and he was of opinion that the plaintiff must be bound by the statement in the notice that he was only imprisoned 150 days, and inasmuch as more than six calendar months had elapsed between the expiration of that time and the commencement of the action, that the action was not brought within the time limited by the statute, and directed a nonsuit. A rule nisi having been obtained to set aside the nonsuit and for a new trial.

*Mr. Welsby* now showed cause. The allegation that the plaintiff was imprisoned for 150 days, although laid under a *videlicet*, is material, otherwise it would be sufficient to say he was imprisoned for a long space of time, which would not properly apprise the defendants of the nature of the act complained of. Then, if the allegation is material, the plaintiff is bound by his statement, and the action does not appear to have been brought within the time limited by the statute. In *Stringer v. Martyr*,<sup>a</sup> which was an action against justices, the plaintiff in his notice claimed in respect of goods taken of a large value, to wit, of the value of 2*l.*, and the judge held the plaintiff bound by his notice, so that he could not claim damages for trespass to his house.

*Mr. Pashley*, *contra*. The whole imprisonment is one continuous act and if the defendants have done an illegal act, the plaintiff is entitled to recover for the whole imprisonment. In *Martens v. Upcher*,<sup>b</sup> *Lord Denman, C. J.*, said, "I do not go so far as to say that a party will always be strictly bound to prove the time and place which he names in his notice; but I think the words of the statute require that a time and place for the occurrence be named." In *Jacklin v. Fytche*,<sup>c</sup> the Court of Exchequer said the cause of action must be described with convenient certainty. [*Lord Denman, C. J.* The object of the act is to let the defendants know the nature of the act complained of. *Patteson, J.* You may only state in the notice that the plaintiff was imprisoned for a week, and how can the defendants know how to tender sufficient amends?] All the facts of the trespass are stated in the notice with the requisite degree of particularity to inform the defendants of the nature of the charge, and the plaintiff should not be strictly confined to the number of days specified in the notice.

*Lord Denman, C. J.* On the face of this notice it does not appear that the action was commenced within six calendar months, as required by the statute.

*Patteson and Wightman, J.'s*, concurred.  
Rule discharged.

<sup>a</sup> 6 Esp. 134.

<sup>b</sup> 3 Q. B. R. 652.

<sup>c</sup> 14 Mees. & Wels. 380.



*Christopherson v. Beard.* Sittings after Hilary Term, 1846.

PLEADING.—ASSAULT AND IMPRISONMENT.  
—LEAVE AND LICENCE.

*To an action of trespass and imprisonment a plea of leave and licence is bad, at all events as far as regards the assault, as amounting to the general issue.*

THIS was an action of trespass for assault and imprisonment, alleged in the declaration to be against the will of the plaintiff. The defendant pleaded leave and licence; to this plea the plaintiff demurred on the ground that it was an informal traverse of the allegations in the declaration, and amounted to the general issue.

Mr. O'Malley, in support of the demurrer. An assault implies that it is against the will of a person, and there can be no assault where there is consent. The plea, therefore, is only an informal denial that any assault was committed. The same doctrine applies in criminal cases, that a person cannot be guilty of an assault where there is consent, *Regina v. Banks*;<sup>d</sup> *Regina v. Marten*.<sup>e</sup> The imprisonment also implies restraint, and the plea denies any restraint. The plea, however, is general, and confesses the allegations in the declaration, and if, therefore, bad as to the assault or imprisonment, it is bad altogether.

Mr. Pearson, *contrâ*. The plea confesses an assault and imprisonment in fact, but does not confess it to be against the will. The same argument would apply to trespass against the person as to trespass against personal property, and in the latter case *Milman v. Dohwell*<sup>f</sup> is an express authority that leave and licence is a good plea to taking personal property. In *Regina v. Meredith*,<sup>g</sup> Lord Abinger, C. B., seemed to assume that leave and licence might be pleaded to an action of assault. Imprisonment does not necessarily imply that it was against the will of the party; many instances might be given where it would not be so.

Lord Denman, C. J. It is not necessary to say whether an imprisonment may be justified under such circumstances as exist in this case. But an assault imports, that it is an attack against a person who does not choose to be so attacked. It is in vain in such a case to say, "I did so treat you, but I did so with your consent." Such a statement is a contradiction in terms.

Mr. Justice Patteson. I do not say how it would be as to an imprisonment, but an assault infers something against the will of the party. If the assault is against the will of the party, it cannot be confessed and avoided by saying, I did it by your will. Then the plea is bad in part, and being bad in part is bad for the whole.

Mr. Justice Coleridge. If the declaration had been confined to a charge for an assault, and the plea had been, not guilty, the defendant could show they had been playing together,

that he had been invited by the plaintiff to do what constituted the assault, or anything which showed he had not committed an assault in law. But a plea admitting an assault and pretending to justify it on leave and licence, is bad.

Mr. Justice Wightman concurred.

Judgment for the plaintiff.

#### Common Pleas.

*Stroughill v. M'Leod.* Hilary Term, 1848.

OBTAINING SPECIAL JURY.—SERVICE OF RULE FOR.—REASONABLE PROMPTITUDE.

*The rule of Hilary Term, 1 Vict., rule 3, applies only to the application for a rule for a special jury, and does not render irregular the service of the rule, though not made more than six days before the day for which notice of trial has been given.*

*Where notice of trial had been given for the 26th, and a rule for a special jury obtained by the defendant on the 19th of the same month, was served on the 20th, and on the 24th there followed a service of the notice to strike the special jury on the 26th; Held, that the plaintiff, who had countermanded the notice of trial, could not complain of want of reasonable promptitude on the defendant's part.*

IN this case notice of trial had been served on the 18th of January for the 26th, being the second sittings in the present term. On the 19th of the same month a rule for a special jury was obtained by the defendant, and a copy served personally on the plaintiff's attorney the next day. On the 24th a notice to strike the special jury was served in the same manner, for the 26th. After this latter service, the plaintiff countermanded his notice of trial for the 26th, so as to allow of the cause being tried at the adjourned sittings after the present term; and on the 25th the plaintiff obtained a rule calling upon the defendant to show cause why the rule for the special jury should not be discharged, or why the cause should not be tried at the adjourned sittings after this term, in the order in which it was entered, by a special jury, if the defendant should then have one in attendance; and why, in default thereof, the cause should not then be tried by a common jury. The grounds for the rule were, first, that the proceedings to obtain the special jury were not in accordance with the rule of court, Hilary Term, 1 Vict., rule 3, which declared that where notice of trial had been given, no rule for a special jury "is to be granted, unless such application is made for it *more than six days*" before the day for which notice of trial has been given. Secondly, that the defendant had not proceeded to strike the special jury with sufficient promptitude.

*Cleasby* now showed cause against the rule. The proceedings were perfectly regular. The rule of court only provided that the rule for the special jury should not be granted, unless the application for it were made six days before the day appointed for trial, and here the appli-

<sup>d</sup> 8 Car. & Payne, 574. <sup>e</sup> 9 Car. & Payne, 213.

<sup>f</sup> 2 Camp. 378. <sup>g</sup> 8 Car. & Payne, 589.

cation had been in time, and the rule actually granted. Then, if regularly obtained, there was nothing like delay or want of promptitude on the part of the defendant in the proceedings. He referred to *Phelps v. Keily*, 11 L. J. C. P. 99, 1 Dowl. N. S. 501.

*Maynard*, in support of the rule. The proceedings for the special jury were not in accordance with the rule as to promptitude laid down in *Church v. Harris*, 2 Scott, N. S. 82. The service of the rule for the special jury, as well as the application, should have been six days before the day of trial, and to avoid the delay occasioned to the plaintiff, the court ought to allow of the alternative prayed for by the present rule, by which the defendant would be compelled to try at the adjourned sittings after term. *Bush v. Pring*, 9 Dowl. 181.

*Williams, J.* Ought you not to have had the courage to treat the proceedings as a nullity?

*Maynard.* We preferred having the direction of the court, and to permit of that the notice of trial was countermanded.

*Maule, J.* I think the rule for the special jury must be maintained. The rule of court is quite clear. It speaks of not granting the rule for the special jury, unless the application be made more than six days before the day of trial. Here the application was made more than six days before the day for which notice of trial was given. I agree that, having obtained the rule, the defendant was bound to use reasonable promptitude in the matter, and I think he has done so. It was impossible to get the special jury by the original day of trial, and the plaintiff having himself enlarged his notice of trial to a future sitting, can have no ground of complaint.

*Cresswell, J.* I think, also, the rule was regularly obtained, and *Gurney v. Gurney*, 3 Dowl. & Low. 734, is an authority to show that there was nothing irregular in the service. If any prejudice were shown to occur to the party against whom the rule was obtained, the court might be induced to interfere, but in the present case the plaintiff, acting for himself, postpones the day of trial, and cannot, therefore, say he has been prejudiced. On the whole, I think the rule for the special jury must take its course.

*Williams, J.*, concurred.

Rule discharged.

### Court of Exchequer.

*Vane v. Cobbold.* Jan. 14, 1848.

RAILWAY SHARES.—RIGHT OF ALLOTTEE TO RECOVER DEPOSITS WHERE FRAUD.

*Deposits cannot be recovered from a railway company on the ground of fraud, unless the fraud is proved to have been committed before the payment.*

THIS was an action brought by an allottee of shares in the Cambridge and Worcester Railway Company, to recover his deposit, on

the ground of fraud by the directors. The prospectus issued by them stated the shares at 60,000; 35,000 only were allotted; and the letters of allotment stated the 16th October as the last day for the payment of deposits, and in case of default the allotment was to be void. On that day the plaintiff paid his deposit upon the shares allotted to him. The whole number of shares upon which the allotments were paid was 18,160. The plaintiff signed the deed, which was in the usual form, and was fully executed and sent to London. The plaintiff having been nonsuited at the trial,

*Martin* moved to set aside the nonsuit, and contended that the case came within the rule laid down by Parke, B., "that the concealment by the party of a fact known to him to be material, was the same as if he should have made a false representation." That the keeping back the fact that only 18,160 had paid was in itself a fraud against the party. No person could pay after the 16th Oct., therefore, on the 17th all was paid that could be paid. The directors then should have said that the scheme had failed, because the whole number of shares had not been subscribed for; and in that case the whole of the expenses fell upon the promoters. It was a fraud upon the plaintiff to allow him to execute the deed and suppress the fact that not one third had subscribed. The doctrine was laid down broadly and distinctly in *Nockells v. Crosby*, 3 B. & C. 814. He also referred to *Walstab v. Spottiswood*, 15 M. & W. 501.

*Parke, B.* If you seek to get rid of the deed by fraud, you must prove a fraud before the execution of the deed, so, if to get rid of the payment, you must prove the fraud to have been before the payment. This you have failed to do.

*Per Curiam.* Rule refused.

### Court of Bankruptcy.

*In re Brodie, Ex parte King.* Feb. 5, 1848.

AMOUNT OF BOND UNDER 1 & 2 VICT. C. 110.—PRACTICE.

*A commissioner to whom a bond is submitted under the 1 & 2 Vict. c. 110, will not enter into an investigation as to the nature or validity of the debt.*

*When the sum sworn to exceeds 2,000l., the bond should be for 1,000l. beyond the sum sworn to, but a bond in a smaller amount may be entered into with the consent of the debtor.*

THE assignees of Messrs. Brodie, who are bankrupts, filed an affidavit in this court, under the 1 & 2 Vict. c. 110, s. 8, alleging that Thomas King and William Bird Brodie (one of the bankrupts, were justly and truly indebted to the bankrupts, before their bankruptcy, in the sum of 2,842l. 14s. 2d., for money lent and advanced by the bankrupts to William Bird Brodie and Thomas King, at their request.

*Mr. Rogers*, on behalf of Thomas King, now appeared to submit to the commissioner a bond

with two sureties, conditioned in the terms required by the act. He suggested that, under the circumstances apparent on the face of the affidavit filed by the assignees, and other circumstances which he was prepared to prove, the commissioner ought not to require Mr. King to find sureties to enter into a bond in the full amount sworn to by the creditor. It appeared upon the affidavit that William Bird Brodie was at once plaintiff and defendant in this proceeding, and it was a fact capable of easy proof, that the bankrupts, at the time the fiat issued, had bank notes in their possession belonging to Mr. King to the amount of 1,100*l.* This sum of 1,100*l.* was a set-off which, in any event, should be deducted from the sum claimed by the assignees from Mr. King.

Mr. Commissioner Goulbourn. At this stage I am only to approve or disapprove of the bond and the sureties. If there be any objection to the debt which has been sworn to, the objection should be taken, when the creditors issue a fiat against Mr. King, and seek to make him a bankrupt.

Mr. Rogers said, that by the words of the statute the trader was to "enter into a bond in such sum, and with such two sufficient sureties as a commissioner of the Court of Bankruptcy shall approve. The sum therefore was in the discretion of the commissioner, and it was proposed in this case to satisfy the commissioner,

that the bond ought to be taken in a nominal sum. The bond should be a reasonable bond, not a bond to oppress her Majesty's subjects; and to enable the commissioner to ascertain whether the bond was reasonable in amount, it was necessary to consider how the accounts stood between the parties.

Mr. Commissioner Goulbourn. The practice has already been, to take the sum sworn to in the affidavit filed by the creditor, and when, as in this case, the sum sworn to exceeds 2,000*l.*, the bond is to be taken in 1,000*l.* additional. Here the sum sworn to is 2,842*l.* 14*s.* 2*d.*, and the bond should be in the sum of 3,842*l.* 14*s.* 2*d.* If we were not to take the debt at the sum sworn to by the creditor, it would involve the necessity of investigating the accounts between the parties in every case, which would obviously be a most inconvenient and objectionable course.

It was then intimated to the commissioner that the assignees of the bankrupts were willing to take a bond with two sureties in the sum of 1,000*l.*, instead of that named by the commissioner.

Mr. Commissioner Goulbourn. If all parties consent that the bond shall be taken for the sum of 1,000*l.*, but not otherwise, I shall approve of a bond for that sum. *Consensus tollit errorem* is an established maxim in every court.

The bond was then taken in the sum of 1,000*l.*, as agreed to.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### GROUND OF ACTION AND PRINCIPLES.

[Continued from the First Part of this Section of the Digest, p. 396, *ante*.]

#### FRAUDS, STATUTE OF.

*What a sufficient consideration.*—*Indorsement on memorandum.*—*A.* contracted to purchase of *B.* the good-will, &c., of a public-house. On the back of the agreement was the following memorandum, written, and signed by *C.*, after the execution of the agreement by *A.* and *B.*:—"I hereby undertake that my daughter, *B.*, shall perform all the covenants and conditions named in the annexed agreement, and hold and consider myself responsible for her." The whole was described by the witness as having been one entire transaction. In an action against *C.* to recover back the deposit, on the purchase going off by the default of the vendor: *Held*, that the agreement and indorsement might be looked at together for the purpose of making out a consideration for the defendant's promise. *Coldham v. Showler*, 3 C. B. 312.

### INTERPLEADER.

See *Sheriff*.

#### LANDLORD AND TENANT.

*Yearly tenancy.*—A tenancy from year to year so long as both parties please is determinable at the end of the first as well as of any subsequent year, unless, in creating such tenancy, the parties use words showing that they contemplate a tenancy for two years at least.

Therefore, where a tenant, at the expiration of a term of years, held over, and the landlord received rent from him: *Held*, that the landlord might, by a half-year's notice, require him to quit at the end of the first year after the term of years had expired. *Doe d. Clarke v. Smaridge*, 7 Q. B. 957.

Case cited in the judgment: *Bishop v. Howard*, 2 B. & C. 100.

And see *Lease ; Use and Occupation*.

#### LEASE.

*Reservation of right of sporting.*—*Royalties.*—*Free warren.*—In trespass for breaking and entering the closes of *A.*, (the plaintiff,) it was pleaded that *B.*, (the defendant,) being seised in fee of the closes, and of the manor of *M.* whereof the closes were parcel, demised the

closes to C. for 99 years; and that afterwards by indenture made between B. of the one part, and C. of the other part, C. granted to the defendant the sole and exclusive right to pursue, kill, and take all kinds of warren at any time during the term in and upon the closes, together with free liberty to enter the closes, and therein to pursue, kill, stake the birds of warren in and upon the same, at any time, at his free will and pleasure; and so justified entering upon the closes for the purposes of pursuing therein birds of warren. A. cravedoyer of the indenture, and demurred to the plea. The indenture appeared to be a demise of the closes by B. to C., "except, and always reserved out of that demise unto B., &c., all timber, trees, &c., and also except and reserving all royalties whatsoever to the premises belonging or in any wise appertaining."

*Semble*, that this clause created an exception or reservation, and was not properly pleadable as a grant.

But *held*, that at all events, it did not amount to a grant by C. of a liberty to B. to enter upon the closes for the purpose of pursuing, killing, and taking birds of warren. *Punnell v. Mill*, 3 C. B. 625.

#### LIEN.

See *Bankers*, p. 396, *ante*.

#### LIFE ASSURANCE.

*Construction of condition as to "suicide" by the assured.*—A. effected a policy on his own life, subject, amongst others, to the following conditions:—That the policy should become void, if the assured should die on the high seas, or should go beyond the limits of Europe, or enter the military or naval service, except with the permission of the assurers; and that "every policy effected by a person on his or her own life should be void, if such person should commit suicide, or die by duelling, or the hands of justice."

A. died in consequence of having voluntarily, and for the purpose of killing himself, taken sulphuric acid, but under circumstances tending to show that he was at the time of unsound mind. In an action by the administratrix of A. upon the policy, the defendants pleaded that A. did commit suicide, whereby the policy became void; and at the trial the judge directed the jury, "that, in order to find the issue for the defendants, it was necessary that they, the jury, should be satisfied that A. died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent; that the burthen of proof, as to his dying by his own voluntary act, was on the defendants; but, that being established, the jury must assume that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence."

*Held*, upon a bill of exceptions, that this direction was erroneous; for that the terms of the condition included all acts of voluntary self-destruction; and, therefore, that if A.

voluntarily killed himself, it was immaterial whether he was or was not at the time a responsible moral agent, (*dissentientibus, Pollock, C. B., and Wightman, J.*) *Clift v. Schwabe*, 3 C. B., 437.

Case cited in the judgment: *Borradaile v. Hunter*, 5 M. & G. 639; 5 Scott, N. R. 418.

#### LOTTERY.

*Money had and received.*—*Privity between plaintiff and defendant.*—Defendant was the treasurer of a Derby lottery, and received the subscriptions. Tickets, marked with the names of horses entered to run for the Derby stakes, were issued to the subscribers; and it was understood that the holder of a ticket bearing the name of a winning horse would receive a prize in money. Defendant received 5s. for each ticket, and was to pay the prizes. The holder of a ticket purchased of defendant sold it to plaintiff. There was no written contract between any of the parties, and the party who bought of defendant subscribed as for himself. The horse named on plaintiff's ticket won.

*Held*, that the plaintiff could not recover the amount of the prize from defendant, there being no privity between them. *Jones v. Carter*, 8 Q. B. 134.

#### MARRIED WOMAN.

See *Chose in Action* p. 398, *ante*; *Power of Appointment*.

#### MINING COMPANY.

*Liability of member on bills of exchange accepted by mine agent.*—By the deed of association of a mining company, it was provided, that the affairs of the company should be managed by a committee of seven shareholders, called managing directors; and they were empowered at their meetings to vote by proxy; and B. was appointed the resident director or manager, to superintend the mine and the local concerns thereof, hire workmen, provide machinery, &c., but subject to the instructions he might from time to time receive from the managing directors, to whom he was to transmit monthly accounts of the ore raised, wages paid, &c., and a full statement of all debts and liabilities due from the company; with a proviso, that he should not expend or engage the credit of the company for any sum exceeding 50l. in any one month, without the express authority in writing of three of the managing directors: *Held*, that this deed did not authorize B. to draw or accept bills of exchange in the name of the company, even for necessary purposes of the mine, without the express authority of the managing directors: *Held*, also, that a managing director, who was represented at a meeting of directors by proxy, was not bound by a resolution of the directors present at such meeting, authorizing the resident director to accept bills for the company. *Brown v. Byers*, 16 M. & W. 252

#### NEGLIGENCE.

See *Railway Company*, 1.

PATENT.

1. *Construction. — Novelty of invention.* — Where letters patent were granted for improvements in apparatus for the manufacture of certain chemical substances, and the jury found that the apparatus was not new, but that the patentee's mode of constructing the parts of the apparatus was new, the court directed the verdict to be entered for the defendant, upon an issue taken upon the novelty of the invention. *Gamble v. Kurtz*, 3 C. B. 425.

2. A patent is not avoided by an assignment to trustees for the benefit of the creditors of the patentee, exceeding 12 in number. *M'Alpine v. Munghall*, 3 C. B. 496.

POWER OF APPOINTMENT.

*Exercise of, by a feme covert.* — A., being seised of copyhold lands, in contemplation of her marriage with B., surrendered the same, to the intent that the lord might re-grant the same to the use of A. until the solemnization of the marriage; and from and after the marriage, to the use of B. for life; and, after his decease to A. and her assigns for life; and after her decease, to the use of such child or children of the body of A. by B. to be begotten, and for such estate, &c. charged with any sum or sums for any other of their children, as A. should by deed or will limit, devise, or appoint, &c., and in default of appointment, to the use of all the children of the marriage, in equal shares; and in default or failure of such children, then, from and after the decease of B., to the use of A., her heirs and assigns for ever.

The marriage took place, and two sons having been born, A., by a will, referring to the power, gave, devised, and appointed the premises to her eldest son C., his heirs and assigns for ever, from and after the decease of B., upon condition that he should pay to his brother D., the second son, 200*l.*, within one year after the decease of B., or on D. attaining the age of 21. The will then proceeded:—"But in case it should happen that neither of my sons aforesaid shall be living at the decease of B., then I do give, devise, and appoint the said copyhold, messuage, &c. unto E., (the father of B.), his heirs and assigns," in trust for sale.

Subsequently to the date of the will, there were four other children born of the marriage. A. died without altering her will. C. and D. died before their father, B.

*Held*, that the appointment of A. was not void, by reason of its having been made by her during coverture, notwithstanding the original surrender contained no express dispensation with the disability arising from coverture.

But, *held*, that the appointment was void, by reason of the subsequent limitation to E., the grandfather, for that the estate or interest given to C., the son, by the former part of the will, was not less subject to be defeated in consequence of the gift over being to a person incapable of taking, than if it had been to a person who was properly an object of the power. *Doe d. Blomfield v. Ryce*, 3 C. B. 557.

Cases cited in the judgment: *Doe d. Nicholson v. Welford*, 12 Ad. & E. 61.

PROMISSORY NOTE.

*Indorsee. — Notice of dishonour.* — In an action by indorsee against indorser of a promissory note, the declaration alleged, that neither at the time when the note was made, nor afterwards, and before it became due, nor when it became due, and on presentment for payment, had the maker or the payee any effects of the defendant in his hands; nor was there any consideration or value for the making of the note, or for the payment thereof, or for the indorsement by the payee to the defendant; and that the defendant had not sustained any damage by reason of his not having had notice of the non-payment of the note: *Held*, bad on special demurrer, as it was inconsistent with the averments in the declaration that the note might have been indorsed by the defendant for the accommodation of a prior party or some third person, in which case the defendant would be entitled to notice of dishonour. *Carter v. Flower*, 4 D. & L. 529.

Cases cited in the judgment: *Bickerdike v. Bollman*, 1 T. R. 712; *Cory v. Scott*, 3 B. & A. 622; *Legge v. Thorpe*, 12 East, 171; *Fitzgerald v. Williams*, 6 Bing. N. C. 68; *Kemble v. Mills*, 1 M. & G. 757; *Exparte Heath*, 2 Rose, 141; *Wilkes v. Jacks*, 1 Peake, 202; *Norton v. Pickering*, 8 B. & C. 610; *Corney v. De Costa*, 1 Esp. 301.

RAILWAY COMPANY.

1. *Negligence. — Accidental fire.* — In a case against a railway company, for so negligently managing and conducting an engine, that certain premises of the plaintiff, adjoining the line, were destroyed by fire emitted from the engine, evidence is admissible for the purpose of showing that other engines belonging to the company, upon other occasions, in passing along the line, threw sparks or ignited matter to a sufficient distance to reach the building in question, without showing the precise circumstances under which this occurred.

The fact of premises being fired by sparks emitted from a passing engine, is *prima facie* evidence of negligence on the part of the company, rendering it incumbent on them to show that some precautions had been adopted by them, reasonably calculated to prevent such accidents. *Piggot v. Eastern Counties Railway Company*, 3 C. B. 229.

Cases cited in the judgment: *Mitchil v. Alestree*, 1 Vent. 295; *Bayntine v. Sharp*, 1 Lutw. 90; *Smith v. Pellah*, 2 Stra. 1264; *Beaulieu v. Finglam*, P. 2 H. 4, fo. 18, pl. 5; 2 C. B. 889.

2. *Sale of shares.* — A contract for the sale of "shares" in a projected railway is not within the Statute of Frauds.

Such a contract is satisfied by a tender of a "letter of allotment," where from the circumstances it may be inferred that the parties dealt upon the footing of such document being equivalent to scrip; and, consequently, there may be a complete breach of such a contract before the actual existence of any "scrip" or "shares," properly so called. *Tempest v. Kilner*, 3 C. B. 249.

3. *Sale of shares.* — *Held*, that the vendee of shares in a projected railway, under a contract,

to be completed at a future day, may recover as damages for the non-delivery, the difference between the price agreed on and the market price of the day on which the sale should have been completed; but that he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip. *Tempest v. Kilner*, 3 C. B. 253.

4. *Differences on re-sale of shares.*—*A.*, a share-broker, on the 28th of July, 1845, contracted to sell to *B.* certain railway shares belonging to *C.* The scrip having been sent to the company's office for registration, and *A.* being consequently unable to deliver the shares, *B.*, on the 23rd of September, purchased other shares at an advanced price, and claimed the difference from *A.* *A.* accordingly paid him the amount, after notice from *C.* not to do so—one of the rules of the Hull Stock Exchange, of which *A.* and *B.* were both members, declaring brokers to be personally responsible for the fulfilment of their respective contracts with each other—and claimed to be recouped the same by *C.*, as money paid to his use. The price of the shares had not been offered to *C.*, nor had any transfer been tendered to him for execution: *Held*, that the action was not maintainable.

And *held*, that a letter from *C.* to *A.*, requiring all further communications to be addressed to his solicitors, did not dispense with the necessity of such tender. *Bowlby v. Bell*, 3 C. B. 284.

Case cited in the judgment: *Stephens v. De Medina*, 4 Q. B. 422.

#### REPLEVIN.

See *County Court*, p. 399, *ante*.

#### RESTRAINT OF TRADE.

*Divisibility of covenant.*—By deed, reciting that *A.* and *B.* carried on business as perfumers in partnership, and that it had been agreed between them that *B.*, in consideration of 2,100*l.*, should assign to *A.* his moiety of the good will, stock in trade, &c., of the co-partnership, *B.*, in consideration thereof, covenanted that he would not, during his life, carry on the trade of a perfumer within the cities of London and Westminster, or within the distance of 600 miles from the same respectively; and for the observance of the covenant, he bound himself to *A.*, his executors, &c., in the sum of 5,000*l.*, by way of liquidated damages, and not of penalty: *Held*, in the Exchequer Chamber, (affirming the judgment of the Court of Exchequer,) that this covenant was divisible, and was good so far as it related to the cities of London and Westminster, though void as to the 600 miles; that a breach, that *B.* carried on the trade in the city of London, was good; and that *A.* was entitled to recover, in respect of such breach, the whole sum of 5,000*l.*

*Quere*, whether a bill of exceptions lies for misdirection of a judge on the execution of a writ of inquiry. *Price v. Green*, 16 M. & W. 346.

Cases cited in the judgment: *Mellan v. May*, 11

M. & W. 653; *Cheaman v. Nainby*, 2 Str. 739; 2 Ld. Raym. 1456; 1 Bro. P. C. 234.

#### REWARD.

*Discovery and conviction of a felon.—Restoration of stolen property.*—The defendant, who had been robbed of jewellery, published an advertisement, headed "30*l.* reward," describing the articles stolen, and concluding thus:—"The above sum will be paid by the adjutant of the 41st regiment, on recovery of the property, and conviction of the offender, or in proportion to the amount received."

*A.*, a soldier, on the 10th of June, informed his sergeant that *B.* had admitted to him that he was the party who had committed the robbery, and the sergeant gave information at the police-station. On the 14th, the plaintiff, a police constable, learning from one *C.* that *B.* was to be met with at a certain place, went there and apprehended him. The plaintiff, by his activity and perseverance, afterwards succeeded in tracing and recovering nearly the whole of the property, and in procuring evidence to convict *B.*: *Held*, that the plaintiff was not, but (per *Tindal*, C. J., and *Cresswell*, J.) that *A.* was, the party entitled to the reward. *Thatcher v. England*, 3 C. B. 254.

Case cited in the judgment: *Lancaster v. Walsh*, 4 M. & W. 16.

#### SELECT VESTRY.

*Custom for election of churchwardens.*—From the year 1684, (the earliest period of which any records could be found,) the parish of S. W., in the city of London, had been governed by a select vestry, composed of the rector and churchwardens, and those inhabitants who had served the office of churchwardens, or paid a fine for not serving, down to the year 1734, (except in two or three instances, and between 1667 and 1672, when the affairs of the parish were deranged by the great fire of London,) the course had been for the select vestry annually to choose, from among the parishioners at large, one person to act as junior churchwarden, who at the end of the year succeeded to the office of senior churchwarden. From 1734 to 1775, no records of the parish could be found. And from 1775 to 1824, the same course had been pursued, except in four instances. The number of persons composing the vestry on these occasions varied, sometimes as many as 16 being present, sometimes only three. Upon a special case, leaving it to the court to draw inferences from the facts, as the jury would be warranted in drawing.

*Held*, that a repeated re-election of the same person to the office of senior churchwarden, without any necessity for so doing, was in violation of the custom, and consequently void. *Gibbs v. Flight*, 3 C. B. 581.

#### SHERIFF.

*Relief under Interpleader Act.—Entering premises of a third party.*—Goods seized by the sheriff under a *fi. fa.* against *A.*, out of the Court of Exchequer, were claimed by *B.*, to whom they were restored upon the establish-

ment of her right upon an issue directed, at the sheriff's instance, under the Interpleader Act. *B.* afterwards brought *trespass* against the sheriff, for breaking and entering her house, on the occasion of the seizure. This court refused to stay the proceedings, holding the relief and protection afforded to the sheriff by the 1 & 2 W. 4, c. 58, s. 6, to be confined to disputed claims to the goods seized, or to their proceeds.

And, *semble*, that if the proceedings in this court were a violation of the interpleader order, the application for relief should have been made to the court in which the interpleader took place. *Hollier v. Laurie*, 3 C. B. 334.

Case cited in the judgment : *Lawrence v. Matthews*, 5 Dowl. P. C. 149.

#### SHIP-BROKER.

*Commission for procuring execution of charter-party.—Custom of trade.*—The actual earning of freight under a charter-party is not a condition precedent to the right of the ship-broker to his commission for procuring the execution of the charter.

*A.*, a ship-broker, procured a charter-party to be made between *B.*, a ship-owner, and *C.*, under which the owner contracted to bring home a cargo of guano, and the merchant agreed to pay freight at the rate of 4*l.* 15*s.* per ton, to be reduced to 4*l.* 12*s.* 6*d.* if the ship did not arrive off Cork or Falmouth on or before a given day. There was no express engagement on the part of *C.* to ship a cargo : *Held*, that *A.* was entitled to recover from *B.*, upon a *quantum meruit*, for his work and labour in procuring the charter to be executed, without showing the arrival of the vessel on or before the day mentioned, and notwithstanding only a very small quantity of guano had been shipped, and a small amount of freight actually earned ; that the amount of compensation due to him was a question for the jury ; and that, in estimating such compensation, they were properly guided by evidence of what was customary in similar cases. *Hill v. Kitching*, 3 C. B. 299.

Case cited in the judgment : *Devaux v. L'Anson*, 5 N. C. 519 ; 7 Scott, 507.

#### SURETY.

*Release in a joint and several covenant for payment of an annuity.*—A release to one of two sureties who entered into a joint and several covenant to pay an annuity, in default of payment by the grantor, was accompanied by a proviso, that such release should not prejudice the right of the grantee to enforce its payment against the grantor and the other surety, or either of them : *Held*, that the proviso restrained the operation of the release, and that the liability of the co-surety was not affected by such release. *Thompson v. Lack*, 3 C. B. 540.

Cases cited in the judgment : *Solly v. Forbes*, 2 Bro. & B. 38 ; *Exparte Gifford*, 6 Ves. jun. 805.

#### TITHES.

##### 1. Power of commissioners to settle dispute

as to boundaries.—*Agreement for rent-charge.*—Statute 6 & 7 W. 4, c. 71, s. 45, empowering the Tithe Commissioners to decide any question touching the "boundary of any lands," does not authorise them to settle, by their award, a dispute as to the boundary of parishes.

Nor can they do this under the power granted by statute 7 W. 4, and 1 Vict. c. 69, s. 2, even at the request of two-thirds in value of the land-owners, if the boundary of the parish be also a boundary between counties. For by stat. 2 & 3 Vict. c. 62, s. 37, this and the two prior acts are incorporated ; and sect. 34 of stat. 2 & 3 Vict. c. 62, forbids the commissioners to adjudicate on a boundary which divides counties as well as parishes.

If the commissioners are proceeding to adjudicate on such a boundary : *Quære*, whether prohibition lies.

But the court, in such case, made a rule absolute for a prohibition, the commissioners showing cause and making no objection on this ground.

*Quære*, whether a parochial agreement for a continuation rent-charge can legally be made and confirmed, under stat. 6 & 7 W. 4, c. 71, ss. 17, 27, &c., while a dispute exists as to the boundary of the parish. *In re the Ystradgunlais Tithe Commutation*, 8 Q. B. 32.

2. *Certiorari to bring up commissioners' award.—Form of award.—Power of commissioners.*—To a motion for certiorari to bring up the award of an assistant tithe commissioner, it is no answer that the award is already in court under certiorari, obtained by another party.

Statute 6 & 7 W. 4, c. 71, s. 95, took away certiorari in the case of orders and adjudications made by the tithe commissioners under that act. Stat. 7 W. 4, and 1 Vict. c. 69, s. 2, empowers commissioners to settle parish boundaries ; and sect. 3 gives a certiorari to any person interested in the judgment respecting the said boundaries, who shall be dissatisfied therewith, and enacts, that, no removal of such judgment under the writ, the decision of the court thereon shall be final and conclusive as to the boundaries : *Held*, that on the certiorari thus restored, the court was authorised to consider, not only the merits of the decision as to boundary, but all questions usually discussed on certiorari.

The award of an assistant tithe commissioner employed to settle the boundaries of a township on request of the landowners, under stat. 7 W. 4, and 1 Vict. c. 96, s. 2, was quashed on certiorari, as not sufficiently showing jurisdiction :

1. Because it did not state the district to be one of which the tithes were "to be computed."

2. Because it stated the request to have been signed, not "at a parochial meeting called for that purpose," "according to the jurisdiction of" stat. 6 & 7 W. 4, c. 71, s. 17, (referred to by stat. 7 W. 4, and 1 Vict. c. 69, s. 2), but only "at a meeting called for that purpose." In stat. 2 & 3 Vict. c. 62, s. 34, (giving the commis-



sioners power, on requisition, to ascertain old or set out new boundaries.) the proviso "that nothing in this provision" shall extend to any boundary line of a county, or of a copyhold without the consent of the lord, applies only to the enactment in the same clause. And sect. 37 of stat. 2 & 3 Vict. c. 62, which incorporates it with stat. 7 W. 4, and 1 Vict. c. 69, does not abridge the power given by sect. 2 of the prior act.

Therefore, in a case under stat. 7 W. 4, and 1 Vict. c. 69, s. 2, the commissioners may ascertain the existing boundary of a parish, although it be also that of a county, or of copyhold in a manor, the lord of which does not consent to the inquiry.

An award under that clause can be made only when the tithes are "to be commuted," and there is no jurisdiction under it if the tithes have been commuted already. *In re the Dent Tithe Commutation*, 8 Q. B. 43.

3. *Apportionment of rent.*—*Change of cultivation.*—*Prohibition.*—On a commutation of tithes under stat. 6 & 7 W. 4, c. 71, the valuer made an apportionment, which was objected to by landowners in the parish, and the objectors heard, first, by the assistant commissioners, who received evidence for and against the objections, and then by the tithe commissioners, according to section 61. It appeared that the tithes of corn and grain in the parish were payable to the rector, and moduses for all other tithes to the vicar. A rent-charge, in lieu of such tithes and moduses, had been awarded under section 36. *H.*, one of the above landowners, held ancient pasture land of the dean and chapter of Canterbury by lease, which forbade him to plough the land without their licence in writing, for which he had never applied or proposed applying; but lands of the dean and chapter within the same district had been ploughed within living memory. Part of the lands in the parish were woodland. The valuer, in apportioning the rent-charge, under sections 33 and 44, upon *H.*'s pasture lands, assessed them to the vicar's rent-charge according to the modus, and added a small portion of rent-charge to be paid to the rector as part of the gross-rent charge awarded to him, where it seemed that the productive quality of the land admitted of its being arable, and that there was a reasonable probability of its being tilled; but he made no additional assessment on the woodland, not considering that a reasonable probability existed of that land becoming arable. The objectors disputed both the facts and the principle of assessment. The commissioners having inspected the evidence given as above stated for and against the objections, decided that they would confirm the apportionment if they were not forbidden by a superior court.

On motion for a prohibition, *held*, that a prohibition did not lie, the commissioners having acted within their statutory jurisdiction, and according to law. And that the apportionment was right in principle. *In re the Apple-dore Tithe Commutation*, 6 Q. B. 139.

#### USE AND OCCUPATION.

*What rent claimable on holding after expiration of a term.*—Tenant of premises at 47*l.* a year received notice to quit, and the landlord agreed with another party for a holding to commence on the expiration of the current term, at 80*l.* a year. Before the term expired, the new tenant, by consent of all parties, was admitted in place of the outgoing tenant; and the rent was paid at the rate of 47*l.* to the end of the original term. Disputes arising on the new agreement, it was abandoned; but the new tenant continued to occupy. *Held*, that it was a question for the jury, in an action for use and occupation, what rent was fairly payable for the continued holding; no necessary inference arising, under the circumstances, from the former holding at 47*l.* *Mayor of Thetford v. Tyler*, 8 Q. B. 95.

#### USURY.

*Charge on land.*—*Judgment.*—The proviso in the 2 & 3 Vict. c. 37, s. 1, contemplates a direct and immediate security upon the land.

Therefore, a loan of more than 5*l.* per cent. upon bills of exchange and upon a warrant of attorney, authorising the party to whom it is given to enter up judgment immediately, with a defeasance that execution shall not issue until default of payment of the bills of exchange, is not "a loan or forbearance of any money upon security of any lands," &c., within the meaning of the proviso in the 2 & 3 Vict. c. 37, s. 1; although a judgment duly signed and registered is "a charge" upon the land, under the 1 & 2 Vict. c. 110, ss. 13, 19. *Lane v. Horlock*, 4 D. & L. 408.

Cases cited in the judgment: *Colebrooke v. Layton*; 4 B. & Ad. 578; *Saltmarsh v. Hewett*, 1 A. & E. 812; *Withey v. Gilliard*, Leg. Obs. Hil. Term, 1842, Q. B.

#### WASTE, PERMISSIVE.

*Against whom action maintainable.*—A declaration in case stated, that the defendant held and occupied a messuage, &c., as tenant thereof to the plaintiff, under a demise thereof made by the plaintiff to the defendant, by reason of which said tenancy it became and was the duty of the defendant to manage and use the said tenements in a tenant-like and proper manner, and not to permit or commit waste thereto; yet the defendant did not manage and use the said tenements in a tenant-like and proper manner, but on the contrary thereof, wrongfully and unjustly suffered and permitted them to be waste, ruinous, &c., for want of tenantable and necessary repairs: *Held* bad, on general demurrer, for not showing that the defendant was more than a tenant at will, who is not liable to an action for permissive waste.

*Semble*, a tenant for years is liable under the stat. of Gloucester, 6 Edw. 1, c. 5, to an action for permissive waste. *Harnett v. Maitland*, 16 M. & W. 257.

Case cited in the judgment: *Greene v. Cole*, 2 Saund. 252.



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 4, 1848.

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—“ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

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## PROPOSED CONTINUANCE OF THE INCOME TAX.

ASPIRING, as we do, to nothing beyond reflecting the feelings and promoting the interests of a particular profession, we have usually thought these objects best consulted by refraining from discussing in our pages party questions, or even questions of general politics. In adverting to the proposed continuance of the Income Tax in its present objectionable form, we venture to hope we shall not be considered guilty of a deviation from the rule generally acted upon. The tax presses with such unjust and unequal severity upon all who derive their incomes from the exercise of talent or industry, as compared with those whose incomes arise from real property or invested capital, that it operates as a peculiar hardship upon professional men, and especially upon those belonging to the legal profession. The profits arising from trade are undoubtedly subject to great variations and uncertainty, and a tradesman who is compelled to pay even three per cent., upon an income derived from profits, has good reason to complain that the tax falls very unequally upon him, as compared with the party whose income arises from land, houses, the government funds, or any species of investment which produces an amount of income not subject to any considerable reduction. The profits of trade, however, are generally proportioned in some degree to the amount of capital employed, and the tradesman is usually enabled to carry on his business,

subject to the ordinary fluctuations and vicissitudes. The professional man has in general no capital but his own industry and ability; he is expected to assume and maintain a certain position in society, calling for a heavy expenditure; and if illness or accident obliges him to suspend his personal exertions, he cannot employ a substitute, and the character and connection which he has spent years in establishing ceases to afford him any income. To compel the man, dependent on his personal exertions for the means of living, to contribute the same per centage to the exigencies of the state, as one who has a solid and permanent income, is sheer injustice, which only requires to be stated in order to be felt. The distinction is easily illustrated. Suppose a person with 500*l.* per annum, arising from lands, houses, money in the funds, or money secured by mortgage, becomes ill or dies. In either event his income continues—in the one case for his own benefit, in the other for the benefit of those who survive him. If a professional man with an average income of 500*l.* a year, is unable to give his personal attention to business, his profits generally fall away to nothing, and when that which comes sooner or later to all comes to him, if he has expended what the government has left of his income, he leaves nothing to his family. Of all professional men, the lawyer is peculiarly dependent upon the profitable employment of his time for the continuance of his income. His profits have been within a few years diminished 20 per cent., in some instances 50 per cent., by the direct interference of

the legislature, and the special pleader, solicitor and attorney, are already subjected to the certificate duty, which is in the nature of, and was intended for an equivalent to an income tax, and creates an unenviable distinction between the members of the legal profession and all other professions. The proposal to continue the same amount of income tax, without any corresponding alterations of the burthens to which the legal profession are exclusively subjected, justifies the most decided hostility to the measure. To give the opposition, which we are satisfied is universally felt among the members of the legal profession to the proposed measure, its fair and legitimate weight, there must be previous concert and united action. Why should not all branches of the profession co-operate to defend themselves from a grievous and unjust infliction? The history of the present income tax certainly affords no good reason why the members of the legal profession—or indeed the public at large—should acquiesce silently in the imposition of an increased or even of the same rate of duty.

The act for levying a tax “on profits arising from property, professions, trades, and offices,” (5 & 6 Vict. c. 35,) obtained the Royal Assent on the 22nd June, 1842, and it was expressly enacted by the 193rd section, that it should “commence and take effect from and after the 5th April, 1842, and continue in force until the 6th of April, 1845, and no longer.” By the 8th Vict. c. 4, however, the rates and duties granted by the first recited act were continued “for the term of three years, to be computed from the 5th April, 1845,” and the words *no longer* were ominously omitted. It is now frankly stated, by the head of the department to which the management of the revenue is peculiarly entrusted, that the tax is to be considered as permanent in its nature, though he hoped that the proposed increase would be temporary. In 1842, when this impost was first imposed, the sense of the legal profession as to the peculiar severity of its operation on its members as a distinct body, was generally felt and expressed, but there was a want of organization and united action which materially detracted from the force which any representation backed by the strength of the profession, may be expected to carry with it. Now that the tax has avowedly assumed a permanent character, there are additional grounds for a loud and unanimous protest against its imposition in its present form. As already

announced, a petition has been prepared, and lies for signature in the Hall of the Incorporated Law Society, to which the members of the profession at large are invited to affix their signatures. We have little doubt that the various law societies established in the provinces, will follow the example set by the Incorporated Society, and that the government and the legislature will speedily be informed that, although the legal profession are ready, and even desirous, to bear their full share of the public burthens, they protest against being made the peculiar victims of a system of fiscal polity which is not recommended by any statesmanlike considerations, accompanied by any prospect of compensation, or rendered indispensable by any national emergency. The principles and representations under which the present income tax was originally introduced and submitted to, are sufficiently explained by the following extract from the speech of the Duke of Wellington, upon proposing the third reading of the bill, in the House of Lords. His Grace is recorded to have said :—

“We are aware of the odious nature of the powers given to the commissioners and others appointed to carry out its provisions, and to whom it must be entrusted, and we reconcile it only to ourselves by the strong necessity of the case—nothing but the certainty that no other course could be taken which would produce a revenue to enable us to meet the difficulties of the country, or to take those measures which may be necessary for its prosperity, could have induced us to propose such a measure to parliament, and, as I said before, it will not be continued one moment longer than is absolutely necessary.”

We shall only add an expression of our hope, that neither the momentous events which are occurring at the opposite side of the Channel, nor the modification of the original plan lately proposed by the government, will induce the legal profession tamely to submit to what amounts to a positive injustice. Circumstances may render the opposition for the present unsuccessful, but its effects will be felt hereafter, when the taxation of the country is placed on a fair and equitable basis. The imposition of a uniform rate without reference to the source from whence income is derived, is equally objectionable in principle, whether the rate per cent. is continued at three, or increased to five pounds per annum. We trust, therefore, that the renewal will not be silently acquiesced in, as such acquiescence may be considered a ground for an increase upon some future emergency.

The following is a copy of the petition lying for signature at the Law Society's Hall, Chancery Lane:—

"That the petitioners have learnt with regret the proposal submitted by her Majesty's ministers, for continuing the present tax, commonly called "the Income Tax," for a further period of five years,—the amount of such tax, as respects incomes of 150*l.* a year and upwards, being proposed to be continued.

"The petitioners submit, that the present 'Income Tax' is erroneous in principle, in not discriminating between income derived from professions, and other similar sources and trades, and that derived from property; the former being in its nature uncertain as to continuance and amount; the latter (subject to some modifications not affecting the principle of distinction) being permanent and certain. And the petitioners submit that the present Income Tax is consequently unjust and oppressive, as regards the petitioners and others similarly circumstanced, and persons engaged in trade.

"The prayer of the petition is, that the House will not pass the proposed measure for continuing the present Income Tax. Or, should the House in its wisdom see fit to pass a measure for continuing an Income Tax, that it may be provided thereby that income derived from professions and other similar sources, and trades, be made chargeable at a less rate than income derived from property, according to such a just estimate (having regard to the essential difference between income derived from different sources) as to the House may seem meet."

### TAXATION OF BILLS OF COSTS.

A CASE has been recently reported,<sup>a</sup> in which, although nothing of importance can be said to have been actually determined, two principles have been propounded by the judges of the Court of Exchequer, with reference to the taxation of costs, involving considerations of great interest to attorneys and solicitors.

The case alluded to was brought to the notice of the court, under the following circumstances. An action, commenced by the assignees of a bankrupt, against the Sheriff of Yorkshire, for seizing certain goods of the bankrupt under a writ of *fi. fa.* was set down for trial at the Yorkshire Summer Assizes, but withdrawn by consent; the defendant's attorney agreeing to give a judge's order for payment, on the first day of next term, of 2,000*l.* damages, and all costs which the plaintiffs may have been put to relating to the subject matter

of the cause, as between attorney and client, and that without being subject to any taxation whatever. A judge's order was subsequently drawn up by consent and founded on this agreement, and on the 31st of October the plaintiff's attorney delivered an unsigned bill to the defendant's attorney, amounting to 293*l.* On the 3rd of November a summons was taken out to tax the bill so delivered, but the judge declined making an order, and on the 9th of November the damages and costs were paid, the defendant's attorney protesting in writing against the amount of the bill as delivered.

A rule having been afterwards obtained, calling on the plaintiff's attorney to show cause why the bill should not be taxed on a liberal scale, it was submitted by the plaintiff's counsel, that as the bill was not delivered a month before action brought, or signed by the attorney, the court had no authority to direct it to be referred to taxation under the 6 & 7 Vict., c. 73, s. 37; and that there could be no right to tax the bill, as the defendant expressly stipulated that the bill was not to be taxed; and the plaintiff's attorney swore, that no costs, taxed according to the scale settled by the Master, would pay the heavy expenses incurred by the plaintiff under circumstances peculiar to this case.

Upon the first point, the judges were of opinion, that the attorney having delivered a bill which was not signed, did not preclude the court from referring it to taxation under the 6 & 7 Vict., c. 73. Upon this point, *Parke, B.*, said:—"The Lord Chancellor held in *re Pender*,<sup>b</sup> as the Master of the Rolls had done, that a bill of costs delivered may be referred to taxation, though not signed by the solicitor, or inclosed in a letter signed by him and referring to it. It was there thought that 'such bill,' in section 37, is not confined to a signed bill, but extends to any bill containing the attorney's demand;" and *Alderson, B.*, added:—"It is the attorney's duty to deliver a signed bill, and if he neglect to sign the bill he delivers, it is difficult to see how he can by that default exempt his bill from taxation."

Upon the second point raised by the plaintiff's counsel, *Parke, B.*, said:—"Have we any power to tax a bill against an express agreement not to tax it? If a man chooses to enter into such an agreement, he cannot tax the bill under the statute. The Master must tax the bill by

<sup>a</sup> *Young and another, assignees, v. The Sheriff of Yorkshire*, 16 Mees. & W. 446.

ordinary rules." The learned baron, however, observed, that an agreement to pay a bill without taxation, was in truth an undertaking to pay a fair bill, and that this bill should be submitted to some competent attorney to see that no unfair or extravagant charges were enforced. The Chief Baron concurred with Baron Parke, that an agreement to pay a future bill without taxation must be understood to mean a reasonable bill. He was of opinion, however, that if an unreasonable bill was sent in, the Court had power, irrespective of the statute, to order it to be taxed. Now what was wanted was, that the sum the defendant was called upon to pay should not exceed the amount to which the plaintiff was fairly entitled.

It was finally settled by consent, that the bill should be referred to the Master to settle the amount on liberal terms, and the rule was discharged.

### REPEAL OF THE ATTORNEYS' CERTIFICATE DUTY.

SOON after the commencement of the present Sessions, the Incorporated Law Society, according to their annual custom, determined to present a petition for the repeal of the certificate duty. They had not at first received any communication from the Provincial Law Societies, but on the 24th ult., a deputation arrived from the Manchester Law Association, which is always active in promoting measures for the good of the profession. The co-operation of the solicitors in the country (as we have always said) is of the greatest importance, because they have the ear of the largest number of members of parliament. Every information regarding the preparations in London were communicated to the deputation, and they were furnished with the draft of a petition which had been already prepared.

The deputation attended a numerous meeting of the council of the Incorporated Society, on the same day, and it was then arranged that a deputation from each body should attend the Prime Minister and the Chancellor of the Exchequer; that the deputations should act jointly, and each procure the attendance of such members of parliament as might be induced to support the application for a repeal of the duty.

It was also resolved by the Incorporated Law Society to request the solicitors throughout the kingdom to present petitions for the same object, and to communi-

cate with their representatives in parliament in support thereof.

An appointment to receive the deputation was procured from the Chancellor of the Exchequer, by Mr. Milner Gibson, for Saturday, the 26th Feb. On the part of the Incorporated Society the following gentlemen attended:—Mr. Austen, Vice-President; Mr. Pickering, late President; Mr. Coverdale, one of the Members of the Council; Mr. Faulkner, a Member of the Society; and Mr. Maugham, the Secretary. On behalf of the Manchester Law Association the following gentlemen attended:—Mr. Heron, Town Clerk of Manchester; Mr. Street and Mr. Fletcher, Members of the Committee of the Manchester Law Association.

The deputations were accompanied by a considerable number of members; viz., by Mr. Milner Gibson and Mr. Bright, the members for Manchester; Mr. Heywood and Mr. Brown, the members for Lancashire; Mr. Duncuft, the member for Oldham; Mr. Pearson, the member for Lambeth; Mr. Brenridge, Coroner for Devonshire, member for Barnstaple; and Mr. Cobbold, the member for Ipswich. The last three members, it will be recollected, are practising solicitors.

Memorials were presented to the Chancellor of the Exchequer for the repeal of the tax from the Incorporated Society and the Manchester Law Association. Mr. Austen and Mr. Heron addressed the Chancellor of the Exchequer on behalf of their respective societies, and they were followed by several of the members of parliament, particularly by Mr. Pearson and Mr. Brenridge, who very ably supported the views of the deputation.

The Chancellor of the Exchequer received the deputation with much courtesy and attention, expressed regret for the absence of Lord John Russell on account of indisposition, and promised that the subject should receive his best consideration."

The following is the substance of the memorial of the Incorporated Law Society, with some additions which have been since made. It is intended to circulate this paper amongst the members of the profession to facilitate the preparation of petitions.

"STATEMENT OF THE INCORPORATED LAW SOCIETY IN SUPPORT OF THE REPEAL OF THE TAX.

"The Certificate Duty on attorneys, and a

\* Since this meeting, the intended increase of 2*l.* per cent. has been abandoned.

Tax on Warrants to prosecute, was imposed in 1785,\* to make up an expected deficiency in the Shop Tax. That tax was afterwards repealed.

"The Warrant Stamp, and all other stamps on law proceedings, were also abolished, as Taxes on the Administration of Justice.

"The Certificate Duty remained, and has been largely increased. At first, if the practitioner resided in London or Westminster, he was charged 5*l.*, and if in any other part of Great Britain 3*l.*

"Such duties were increased in 1804<sup>b</sup> to 10*l.*, and in 1815 to 12*l.* for town, and 8*l.* for country certificates.

"A stamp duty of 110*l.* was also charged in 1804<sup>b</sup> upon Articles of Clerkship, and 20*l.* upon admission; and these sums were increased in 1815<sup>c</sup> to 120*l.* and 25*l.*

"By a return made to parliament, the amount paid for certificates from Easter Term, 1844, to 8th March, 1845, was 89,222*l.*

"By another return, the duties paid on Articles of Clerkship, on an average of the last ten years, amounted to the annual sum of 57,996*l.*; and on annual admissions to 9,900*l.*

These duties are *partial, unequal, and unjust.*

"The pupils or apprentices in the medical profession and in all trades and other business pay a duty on their indentures only proportioned to the premium. The premium on articles of clerkship does not, on the average, exceed 200*l.*; and, consequently, the duty thereon, if equal justice were observed, ought to be 6*l.* only, instead of 120*l.*

"Nor is any other profession than that of attorneys, solicitors, and proctors charged with similar stamp duties; nor is any annual stamp duty imposed on the higher branch of the legal profession.

"Such duties are not founded on any *just principle of taxation.*

"If a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, it ought to be levied not only on the three learned professions, but on all merchants, bankers, manufacturers, traders, and others.

"A small tax on each would remove the grievance complained of, and at the same time produce far more than the amount now levied unjustly upon attorneys and solicitors.

"It is now an established principle that there should be no "*Class Legislation*;" that taxes should be general, and not be imposed for the protection of manufacturing, agricultural, or any other class.

"If, therefore, it be wrong to levy imposts on the community for the benefit of a class, it must be equally wrong to impose burdens on one class in exoneration of the rest.

"The attorneys and solicitors, in common with their fellow subjects, pay at least their equal share of all the taxes imposed on the community at large.

"The Certificate Duty, which falls exclusively on their branch of the profession,

amounts, on an average of the incomes of attorneys and solicitors, to 4*l.* per cent.; and therefore, if they are still required to pay the *Income Tax* on their professional earnings, ought they not in fairness and justice to be relieved from the Certificate Duty? otherwise they will be subjected to a burden of double the amount borne by other classes of the public.

"By the operation of many recent changes in the law and the practice of the courts, and by enactments relating to deeds and other documents, the emoluments of the profession have been much diminished, although the disbursements continue very nearly the same as heretofore. This is submitted to the consideration of the legislature as another reason, if another were required, why this tax should be repealed.

"The severe pressure of the Certificate Tax is strikingly shown by the inability of several hundred attorneys to pay it within the time fixed by the act, the 16th December, in each year. In the last year 266 solicitors did not pay it till the following year, and were consequently excluded from the Stamp Office Law List. Of these, 65 paid only within the last month of the year; and 170 having neglected for upwards of a year, were compelled to give public notice, and apply to the court for permission to renew their certificates."

#### THE MEMORIAL OF THE MANCHESTER LAW ASSOCIATION.

This Memorial states, That the memorialists have heard with much concern that it is proposed by her Majesty's government to increase the Income Tax to 5*l.* per cent. without any modification or alteration of the principle on which it is imposed.

That by the statute of 55th Geo. 3, c. 184, the following annual duties were imposed upon every attorney, solicitor, and proctor.

| On those practising within the   | £  | s. | d. |
|--|----|----|----|
| limits of the twopenny post, who have been admitted for 3 years or upwards | 12 | 0  | 0  |
| On those not admitted so long  | 6  | 0  | 0  |
| On those residing elsewhere who have been admitted 3 years.                | 8  | 0  | 0  |
| On those not admitted so long  | 4  | 0  | 0  |

That by the said act a stamp duty of 120*l.* is also charged upon all articles of clerkship to an attorney, solicitor, or proctor, and a further duty of 25*l.* upon his admission.

That by a return made to the honourable the House of Commons by the registrar of the stamp office, bearing date the 17th March, 1845, it appears that the number of attorneys, solicitors, and proctors, who paid the stamp duties for their certificates in the year 1844, was 10,120, the amount of duty paid being 89,222*l.*

That it appears by a return made to the honourable the House of Commons in 1845, that the duties received on articles of clerkship to attorneys and solicitors in the year 1844, was 51,840*l.*

That the annual sum of 9,900*l.*, or there-

25 Geo. 3, c. 80.

<sup>b</sup> 44 Geo. 3, c. 98.

<sup>c</sup> 55 Geo. 3, c. 184.

abouts, is also paid on the admission of attorneys, solicitors, and proctors into the superior courts.

That no profession, excepting that of your memorialists, is charged with similar stamp duties, nor are the same or any annual stamp duties imposed on the higher branch of the legal profession.

That the income of attorneys and solicitors, derived from their own mental and personal exertions, ought not to be subject to the imposition of the same amount of tax as income derived from realized property; and in respect to tax on income, it appears to your memorialists that the legislature has admitted as a principle, by excluding income of a less amount than 150*l.*, that the same rate of taxation is not applicable to all income, and that it would be a more just application if the same principle were to be extended by a differential rate of duty on different amounts of income; and they also submit that taxation ought to be

item of his Budget. Without placing the character of statesmen very high, either for wisdom or morals, we venture to say that in these times no First Lord of the Treasury would have the face to make such a speech as the following, by which the poll-tax on attorneys was proposed on a debate in the House of Commons on the 8th of June, 1785, and afterwards carried.

Mr. Pitt said, by the regulations which had been made in the shop-tax, he fancied a deficiency of about 20,000*l.* would be occasioned; therefore he was under the necessity of laying some new taxes to make good that sum; and he should resort to a subject in which many had run before him, and, therefore, he was not apprehensive of its being objected to; it was on certain practitioners in the law: perhaps the tax might in some degree diminish the number of those gentry, but, in so doing,

annually upon certificates for leave to practise as attorneys and solicitors should be continued.

That the certificate duty levied on their branch of the profession alone, amounts, on an average of their income, to a tax equal to 4 per cent. and upwards, while they, at the same time, pay their equal share of all the other taxes imposed on the community at large; and your memorialists therefore submit, if attorneys and solicitors are still required to pay the income tax, they ought, in fairness and justice, to be relieved from the certificate duty.

The memorialists therefore submit, that inasmuch as they are under the present law compelled to pay the duty on annual certificates for leave to practise, the tax on income unduly presses on them, and to a greater extent than on the rest of the community; and that if the tax on income is to be increased, a differential tax ought to be imposed between realized property and income, and that a higher amount of tax ought to be borne by the possession of a larger income; but more especially the memorialists submit, that the duty on annual certificates to practise as attorneys and solicitors, ought to be abolished, and that they may not be subjected to a different order of tax than their fellow subjects.

therefore, propose to raise the sum of 20,000*l.* by taxing attorneys; first, by a license, and next, by a stamp-duty on every warrant they issued out for an arrest. He had not been able to collect the exact number of attorneys in the kingdom; but, as near as he could guess, it was 1,400 in London, and 3,000 in different parts of the country; and last year the number of warrants issued out of the King's Bench amounted to 10,000, and all the other courts to about an equal number; therefore he should suppose, on an average, that 20,000 actions were commenced in a year; and the tax, which he meant to lay on every warrant, was not so much for the sake of revenue, as it was to ascertain the business done by each practitioner; and by taxing every warrant, attorneys would contribute, in proportion to their business, and free the tax from partiality; he, therefore, estimated the tax as follows:—1,000 attorneys in London, each to take out a license, and pay for the same annually the sum of 5*l.*, which would produce 5,000*l.*; 3,000 attorneys in the country at 3*l.* each would produce 9,000*l.*; but he should suppose there must be more than 3,000, and would, therefore, estimate them to produce 10,000*l.*; 40,000 warrants for arrests, at 2*s.* 6*d.* each, 5,000*l.*, making 20,000*l.* 25 *Hansard*, 812.

## ORIGIN OF THE CERTIFICATE DUTY.

THE circumstances in which this impost was first exacted are rather curious. Amidst the difficulties of finance ministers to raise the supplies required for the public service, some strange pretexts have been given for imposing particular taxes; but usually there is a plausible excuse offered, and in these days the Chancellor of the Exchequer is expected to "render a reason" for each

## OBJECTS AND PROCEEDINGS OF THE INCORPORATED LAW SOCIETY.

THE Incorporated Law Society has rendered such important services to the profession, and which, for the most part, have been duly acknowledged, that it would seem an act of supererogation to state them. A few active malcontents have of late, however, altogether denied the merits of the

Institution, and so grossly misrepresented some of its transactions and supposed shortcomings, that we deem it, not only an act of common justice to the Society, but of policy towards the profession, to recall to the memory of our readers some of the principal advantages which have resulted from its exertions.

It is probable that the Council of the Society, conscious of discharging their duty to the best of their judgment and ability, and to the satisfaction of the great bulk of the Members, consider it unnecessary to notice the occasional dissatisfaction which attends all governing bodies, and rely on the good sense of the profession at large to discern the beneficial effect of their labours. The complaints, however, though coming from few, are so often repeated, that we think it high time to answer them.

It may well be supposed that the establishment of so comprehensive a Society required much time, labour, and expense. Its founders were long engaged in raising the large fund requisite to accomplish all the purposes for which it was intended. It is, perhaps, not generally known, that besides devoting their valuable time, week by week for many years, the leading members subscribed from 250*l.* to 500*l.* each. About 170 solicitors subscribed upwards of 30,000*l.*; but numbers as well as money were requisite, and after much exertion, about 800 members were associated, whose subscriptions amounted to 50,000*l.*

Prior to this time several Law Societies existed in London:—the old Law Society, the Northern Agents' Society, and the Metropolitan Law Society. These professional bodies were small in number, had "no local habitation," and were limited to the laudable objects of promoting fair and honourable practice, and protecting, so far as they were able, the interests of the profession. The Law Institution, besides these, accomplished many other objects. A large hall for the daily resort of the members was erected,—a complete law library was formed, and a registry of all information relating to the proceedings in parliament and the several courts,—lectures on the principal branches of the law and practice were established. And afterwards the Society succeeded in instituting an examination of articled clerks, the registration of attorneys, and the general supervision of the profession, in controlling malpractice and securing due admissions on the Roll. Amongst other of their important avocations, it is the business of various committees of the Society,

under the sanction of the Council, to consider all bills in parliament relating to the law, and to take such measures as they deem expedient to support, alter, modify, or oppose them.

The Council, with the exception of occasional intervals in the long vacation, meet every week throughout the year. They also frequently hold special meetings, and their special committees likewise hold numerous meetings. The time devoted, even during the most valuable portion of the day, is very considerable; and it is indeed remarkable how regularly the Council assembles, as a matter of professional duty.

It is said that the Society does not perform its duty with sufficient activity in behalf of the profession in general, and especially that it does not attend to the interests of the country practitioners. Now, to estimate the justice of this complaint, it is necessary to look at the constitution of the Society. No less than ten of the Council go out of office annually, so that there are very rapid means of changing the governing body, if they should not represent the opinions of the members at large; but no change, except by death or resignation, has ever taken place.

Moreover, it is in the power of any twenty members to convene a general meeting upon any professional subject, if the Council should decline to call it. No such meeting has ever yet taken place. Seeing the readiness with which signatures are obtained to any requisition affecting the general interests of the profession, it is manifest that any half dozen malcontents might readily procure a meeting if a fit occasion existed. Is it not, therefore, reasonable to conclude that the Council fairly represent the general wishes of their constituents?

It is not to be expected amongst any large body of men, and especially amongst 1,400 lawyers, that there should be a perfect unanimity of sentiment. Either too much or too little is done, or not at the right time, or in the right way. In short, unless superhuman success attend their labours, they are sure to be blamed by somebody.

It is of course competent to the Council to originate any measures which they may think beneficial to the profession, and many valuable improvements have been commenced by them and carried out successfully; but they are always ready to receive suggestions from their members, or from any one who will take the trouble to make



them. They are frequently attended by members of the Society on the consideration of proposed alterations, and are especially attentive to the communications of the country Law Societies.

Those who venture to assert that the Incorporated Society disregards all interests except those of the London profession, should be prepared to state some instance in support of the accusation. We are sure they cannot do so.

As an example of the fallacy of the complaint, we may take the grievance of the annual certificate duty. Our readers need not be reminded that the London attorney pays one-third more than the Country. It will not be said that the average profits in London exceed by one-third those of the country; whilst, for the most part, the expenses are much heavier here than there. It is palpable that the metropolitan members of the profession are therefore equally interested with the provincial in removing this unjust impost, and yet they are accused of supineness in the necessary measures for its repeal.

One of the new law journals takes great credit to itself for arousing by its suggestion the London profession from its apathy, and lauds the superior energy which it has excited in the country. We have no wish to underrate or discourage the exertions of any one who is willing to assist in this important object. The profession needs all the friendly help it can obtain. It too rarely happens that the members of the bar are disposed to aid their junior brethren, and therefore we hail the services of any new labourer in the field. We have fought the good fight on this and divers other grievances for eighteen years, and are quite willing that the ultimate victory should be shared by all who even at a late hour heartily join in the conflict. We will not say that we are *abler*, though we have the "painful pre-eminence" of being *older* soldiers than some of those who seem disposed to put the laurels on their brow before they are won. We think nothing is to be gained and much may be lost by disturbing the friendly feeling between the town and country allies. Union is essential to afford even the chance of success.

## NEW BILLS IN PARLIAMENT.

### APPEAL IN CRIMINAL CASES.

THIS is a bill to establish the power of appeal in criminal cases, brought in by Mr. Ewart, Mr. Aglionby, and Lord Nugent.

The following is the substance of the proposed enactments:—

1. Any defendant found guilty by any jury may move any one of the courts of Westminster for a rule *nisi* for a new trial; or to enter the verdict for defendant; or to arrest the judgment.

2. Questions of law not to be reserved by judge for consideration of all the judges; but questions of law (as well as questions of fact) to be decided by Court of Appeal.

3. That if any defendant, on being found guilty as aforesaid, shall, by himself or his counsel or attorney, before sentence is pronounced, declare his intention to appeal, the court before which such defendant shall have been tried, shall pronounce a sentence to be carried into execution at the expiration of four days after the omission to bring such an appeal within the time allowed, as hereinafter mentioned, or the determination of such appeal; and such court shall order the defendant to be detained in custody until the time arrives for carrying into execution such sentence; and such court may, at its discretion, and upon the application of such defendant, assign to such defendant such attorney and counsel, not exceeding one of each, as such defendant shall desire for the purpose of conducting such appeal; and such attorney and counsel so assigned shall have free access to such defendant at all reasonable hours.

4. That whenever any defendant shall be found guilty as aforesaid within four days next before the commencement of any term, or in any term exclusive of the last eight days thereof, any such motion for the rule *nisi* must be made within the next eight days after such verdict; and in all other cases such motion must be made within the first four days of the next term after such verdict.

5. That whenever a rule *nisi* shall be granted upon such motion, the defendant shall cause an office copy thereof to be served upon the prosecutor or his attorney; provided that if the prosecutor be dead or cannot be found, then upon affidavit of such fact, the Court of Appeal by which the said rule *nisi* has been granted may order such office copy to be served upon her Majesty's Attorney-General; and in case the said prosecutor, or her Majesty's said Attorney-General shall not appear before the said Court of Appeal to oppose such rule, the said Court of Appeal shall not, in consequence thereof, make such rule absolute; but, upon affidavit of due service of an office copy of such rule, as before-mentioned, shall proceed to hear and determine the case *ex parte*.

6. Court may allow prosecutor costs of opposing rule. Order for payment to be made out by Master of Court, and paid by County Treasurer.

7. How expenses shall be paid in places not contributing to the county rate.

8. One of the Masters to draw up rules of court, and transmit office copies to the gaolers and clerks of assize, &c.

9. Duties of gaolers on receiving such office copies.

10. Duties of clerks of assize, &c., on receiving such office copies.

11. That whenever the said Court of Appeal shall order a new trial to be had, such Court of Appeal, in and by the rule for granting the same, shall order when and where the same shall take place; and the court, before which any such new trial shall be had, shall have the like jurisdiction to proceed to judgment, and to pass sentence, and to order costs, and to do all other things whatsoever, as the court before which the former trial was had.

12. Justices and coroners to bind prosecutors and witnesses to appear and prosecute or give evidence, if necessary, at subsequent trial.

13. When court, before which first trial had, must bind prosecutors and witnesses by recognizances to appear and prosecute or give evidence, if necessary, at subsequent trial.

14. Defendant entitled to copy of indictment.

15. This act not to apply to treasons, except treasons and misprisions of treason within 39 & 40 Geo. 3.

16. This act not to affect writs of error or bills of exceptions.

17. Interpretation clause.

18. This act not to extend to Scotland or Ireland.

19. Commencement of this act.

20. Act may be altered.

## JOINT STOCK COMPANIES' BILL.

By this bill, brought in by Mr. Milner Gibson, it is proposed to amend the acts for facilitating the winding up the affairs of Joint-Stock Companies unable to meet their pecuniary engagements, and also to facilitate the dissolution and winding-up of Joint-Stock Companies.

The following is the scope of the bill:—

The Preamble refers to 7 & 8 Vict. c. 111, and 8 & 9 Vict. c. 98, for facilitating the Winding-up of the Affairs of Joint-Stock Companies unable to meet their Pecuniary Engagements in England and Ireland respectively; to 9 & 10 Vict. c. 28, to facilitate the Dissolution of certain Railway Companies.

### Preliminaries:

Sect. 1. To what Companies Act is to apply; (i. e. Companies within two first-mentioned acts, or which would have been within, if not dissolved when they were passed; railway companies, under 9 & 10 Vict. c. 28, become bankrupt before the day of , and future companies with transferable shares.)

2. Interpretation; (company, member, constitution of a company, contributory, call, creditor, person, month, the court, Master, fiat, and Court of Bankruptcy, order absolute; singular and plural, &c.)

3. Short title of act (*Joint-Stock Companies' Winding-up Act, 1848.*)

### The Petition and Proceedings thereon:

4. Who may petition under this act (i. e.

persons being, or claiming to be, contributories,) and in what cases (i. e. act of bankruptcy; declaration of insolvency; judgment against the company; decree or order against the company; action against a member for the company's debt; creditor's affidavit and suit of summons; dissolution or ceasing to carry on business; other sufficient ground for dissolution).

5. No petition after fiat but under direction of Court of Bankruptcy.

6. After petition no fiat to issue, or if issued, to be prosecuted, but by direction of the Court of Chancery.

7. Heading of petition and subsequent proceedings (in the matter of the *Joint-Stock Companies' Winding-up Act, 1848, and of the company*).

8. Proceedings not to be impeached by reason of the petitioner not having been duly qualified.

9. Petition to be advertised in the London Gazette, and served.

10. Court may order petition to stand over, or further service.

11. Court may make order *nisi*, or reference to Master.

12. Court may apply the provisions of the constitution of the company.

*The Order Absolute, and Proceedings thereon:*

13. Court may make order absolute.

14. Every order until order absolute to be advertised.

15. From what period companies to be dissolved (from date of order absolute, or date to be thereby fixed).

16. Petitioner to carry in order absolute before Master within ten days.

17. On dissolution of suit, court may order winding up under this act.

18. Proceedings in bankruptcy to be conclusive.

19. After order absolute, assets not to be disposed of.

20. Master may appoint interim receiver.

*The Appointment of official Trustee, his Estate, Powers, Duties, &c.*

21. Notice of appointment of official trustee by the Master.

22. Master to appoint official trustee.

23. In appointing official trustee, Master may either adopt or reject proposals.

24. Recognizances of official trustee, and of his sureties.

25. Master may order official trustee and his sureties to pay on their recognizances.

26. Master may take security of Guarantee Society.

27. Appointments and removals to be valid without confirmation.

28. Trustee to have custody of books, &c.

29. On appointment, all estate, effects, and credits of the company, and all powers, &c., to vest in official trustee; registration of orders absolute and appointments of official trustee.

30. When order made on petition by direction of the Court of Bankruptcy, all estate,

powers, &c., of assignees to vest in official trustee.

31. Until court shall regulate by general orders all matters relating to official trustee not provided for by the act, practice as to receivers to be followed.

32. Master may allow salary, &c., to official trustee.

33. Official trustee may employ solicitor.

34. Duties of official trustee (*to keep accounts, realize assets, pay debts, divide surplus, bring before Master questions relating to the winding-up, and take his directions with respect thereto*).

35. Accounts of official trustee to be passed, and contributories only to surcharge and falsify.

36. Official trustee to keep books of proceedings, which shall be certified by the Master.

#### *General Course of Proceeding under Winding-*

37. Master to determine what parties are to attend proceedings before him; and may appoint representatives of contributories or classes of contributories.

38. All contributories on the list may appear, submit proposals, &c.

39. Parties to name solicitors on whom notices to be served.

40. In default of due diligence, prosecution of proceedings may be given to other parties.

41. Death of petitioner, &c. not to abate proceedings.

42. Proceedings to be by proposal, and not by state of facts and proposal.

43. Master may dispense with warrants.

44. Adjournment of proceedings.

45. Master may order other advertisements or services.

46. Master to give certificates of entries, &c.

47. Books of partnership and official trustee to be evidence.

#### *Actions and Suits by and against the Company and its Contributories :*

48. Dissolved companies to sue and be sued in the name of "the official trustee" (*i. e. without the addition of the individual name of the officer of the particular company*).

49. Pending actions, &c. against the company may be prosecuted against the official trustee.

50. Pending actions, &c. on behalf of the company may be prosecuted in the name of the official trustee.

51. Death of official trustee not to abate action or suit.

52. Official trustee, with approbation of the Master, may compromise.

53. Orders and decrees of a court of equity against the official trustee to take effect against the company.

54. Judgments against official trustee to take effect against the company.

55. Act not to effect rights of creditors, &c. nor existing contracts.

56. Official trustee to be indemnified.

57. No action or suit to be instituted or pro-

ceeded with by official trustee but by leave of the Master.

58. No claim of any contributory in respect of his share to be set off against any demand of the official trustee of a dissolved company against such contributory.

59. Official trustee, with leave of Master, may defend suits against individual contributories.

#### *Ascertaining and getting in the Estate :*

60. Master may summon any person, whether a member of the company or not, to give evidence as to the affairs, &c.

61. Costs of witnesses.

62. Penalty on contributories, &c. concealing the estate of the company 100*l.* and double the value of the estate concealed.

63. Pending the winding-up, Master may require payment of balances.

64. Orders may be enforced upon affidavit of default, and without previous demand.

65. Conveyances or assignments of real estate or chattels real by official trustee how to be made and certified.

66. As to stock in the funds.

67. Payment of money into the bank (*to the account of the "official trustee," of the particular company, payment of checks, but trustee to retain sum for current purposes*).

#### *Proof of Debts, &c. :*

68. List of debts to be made out by the official trustee.

69. Master to advertise commencement of winding-up.

70. No action or suit to be instituted or proceeded with against the company but after proof of debt.

71. Proof of debt to be made as in bankruptcy, or otherwise, as Master shall direct.

72. Master to allow or disallow debts.

#### *The Lists of Contributories, and their mutual Rights :*

73. Official trustee to make out list of contributories.

74. List to be settled by Master, and notice given of his beginning to settle.

75. Notice to be given to parties included in or excluded from the list.

76. List to be conclusive when settled, unless cause shown to the contrary.

77. No person entitled to appear as contributory unless name on list.

78. Contributories may summon other persons to show cause why they should be inserted on or excluded from the list.

79. Contributories may inspect books.

#### *Payment of Debts, Calls, and Distribution of Funds :*

80. Master to direct payment of debts.

81. Although assets not insufficient, Master may make calls (*but only to the extent of legal or equitable liability of the contributories*).

82. Master to appoint amount of calls.

83. Notice of intention to make calls to be given.

84. Unless cause shown to the contrary,

peremptory order to be made for payment of calls (*within not less than three weeks from date of order*).

85. Peremptory order to be advertised and served.

86. Official trustee may, with approbation of Master, enforce payment, give time, &c. (*compound, take security, abandon or sell bad debts*).

87. Master may direct action or suit where assets of a deceased contributory are not admitted.

88. Official trustee, by direction of Master, to circulate accounts and balance sheet, &c.

*Powers of Master :*

89. Power to Master to direct issues, special cases and actions.

90. Master to adjudicate on matters of internal contest.

91. Orders, &c. of Master to be valid without confirmation.

92. Orders, &c. to be filed.

93. Orders of the Master to have the effect of orders of court.

94. Master to have all usual powers.

95. In case of illness or absence of any Master, the Master acting for him to have all usual powers.

96. Master acting during vacations to have all usual powers.

*Appeals and Special Reports :*

97. Appeals to the court.

98. Master to make special report as to matters arising in winding-up.

99. Reharing before the Lord Chancellor.

100. Appeal to the House of Lords.

*Costs and Fees :*

101. Costs of paying debts, &c., to be at the discretion of Master.

102. Costs of proceedings before the court.

103. How costs to be ascertained.

104. How recoverable.

105. Court may fix table of fees.

*Services, Evidence and Penalties :*

106. Notices may be served by being sent by post.

107. As to advertisements in Ireland.

108. Advertisements in London and Dublin Gazette to be evidence.

109. Courts to take judicial notice of signature of master or registrar and of office seals.

110. Forging any such signature or seal to be felony (*under 8 & 9 Vict. c. 113*).

111. Punishment of persons giving false evidence, &c.

112. Any contributory of a company dissolved, &c. under this act, with knowledge of or in contemplation of dissolution, &c., destroying books, &c., guilty of a misdemeanor.

*Questions of Jurisdiction and Practice :*

113. Enforcement in Ireland of orders of the Court of Chancery in England, and *vice versa*.

114. Decrees, &c. under this act may be registered in Scotland, and execution may be had as upon a decree interposed to a bond, &c.

115. Where the company shall be wound up in England, and where in Ireland (*i. e. according to situation of registered place of business, or head or only office : but when company transacts business in both countries, presentation of petition to decide the jurisdiction*).

116. Court to have jurisdiction upon petition as upon a suit duly instituted ; general practice of courts to be followed where not varied under this act.

117. Court may stay proceedings on any report or order.

118. Matters not prescribed for to be reported to the court.

*Miscellaneous :*

119. Lord Chancellor, with the advice and consent of Master of Rolls and Vice-Chancellor, to make general rules and orders.

120. Provision as to general orders to apply to Ireland.

121. Petition for dissolution, &c. to be a *lis pendens* under 2 Vict. c. 113.

122. Forms in schedule may be used.

123. Act may be altered, &c.

*SCHEDULE.*

1. Advertisement of petition for dissolution and winding up.

2. Mandatory part of order absolute.

3. Advertisement of intention to appoint official trustee.

4. Proposal of official trustee (and sureties).

5. Order appointing official trustee and sureties, and advertisement.

6. Recognizance of official trustee and sureties.

7. Summons for party or witness to attend before Master.

8. Master's warrant.

9. Order for production and deposit of books, &c.

10. Master's directions to official trustee to bring action against different debtors to company.

11. Order for payment of balance by contributories.

12. Advertisement for creditors.

13. Advertisement that the Master is settling list of contributories.

14. Advertisement of intended call.

15. General order in making call.

16. Order for issues.

**LAW OF ATTORNEYS.**

[There are a few points recently reported, the substance of which it may be well to lay before our readers, without waiting for the regular Digest.]

**LIEN.**

The lien of an attorney attaches upon money received by way of compromise, though the verdict and judgment be against his client.\*

\* *Davies v. Lowndes*, 3 C. B. 823.

## CHANGE OF ATTORNEYS.

Upon an application to change the attorney, where the client is unacquainted with the English language, the affidavits must clearly show that the purport and object of the motion were known to and sanctioned by the client.

It appears that it is no objection to the change of an attorney that the application is made after final judgment.<sup>b</sup>

## ATTORNEY'S AUTHORITY.

The court generally, when a party is prejudiced by the act of an attorney done without authority, leaves him to his remedy against the attorney if solvent; but it is otherwise where a defendant is in custody by reason of the unauthorised act, or where the plaintiff or his attorney is a party to the wrong.<sup>c</sup>

## REVIEW OF TAXATION.

Where costs are in the discretion of the Master, it should be shown on a motion to review a taxation, that the objection to the amount was urged before him.<sup>d</sup>

## NOTICES OF NEW BOOKS.

*An Inaugural Lecture on the Common Law, delivered in the Hall of the Inner Temple, by ROBERT HALL, Esq., Lecturer at Common Law, appointed by the Society of the Inner Temple. 1848.*

THE readings of former days in the Inns of Court were generally on statutes, and sometimes on other branches of law. There exist several valuable readings in print, and many in MS. The readers were men of experience and rank in the profession. Law lectures on an extended scale were rendered popular by the admirable Commentaries of Sir William Blackstone. The old lawyers were well pleased to speak of them as they issued from the press, in terms of great and deserved praise. The Commentaries have been always a text book whereon the English or American laws are administered, and they are translated into many European languages. The book was a hobby to Sir William Blackstone, and when a judge, and a case arose in court, he referred to his books at his side, and to any passage connected with it, to see if it could be improved.

In England we have also Woodison's Lectures; and in the United States, Chancellor Kent's excellent Commentaries.

Law Lectures are now to be delivered in

each of the Inns of Court; this will probably end in lectures for all the Inns; courses on common law, equity, conveyancing, preceded by a course on general law and the civil law. There are other subjects of great importance, as special pleadings; shipping, (an extensive though national and neglected subject,) insurance, &c. &c.

These lectures at the Inns of Court are a new thing: there must not only be good lecturers (whose labour is not light) but a full class of attentive pupils, and perhaps to ensure in these times extensive attendance, good pupils should be rewarded by shortening the time required before they can be called to the bar: the late eminent judge Story had a very numerous law class at Harvard University, but lectures had long been then delivered in the United States.

Lectures, as additions to education for a pupil, may be valuable; but the pupil must be qualified to be a special pleader, equity draftsman and conveyancer, by labours at the desk,—special pleading is the foundation of all: that profound lawyer and judge, the late Lord Eldon, regretted he did not know more of special pleading.

The learned lecturer, Mr. Hall, first says what he means by common law; but, as a good historical foundation is essential to a lawyer, he proceeds with great ability to the history of the laws used in England, first by the ancient Britons, referring to the Welsh laws as showing the old British laws, and from thence he proceeds to the Romans, (p. 9,) though he does not think that the Roman law can be discovered in early Britain: perhaps we are hardly able at this time to judge of that, but the traces of early Roman law may yet be discovered; many of the towns are Roman, and some very populous; he thinks part of the Roman law would be engrafted here by the clergy, (p. 11,) which is very likely for much of the learning of that age rested with them, and Lord Campbell dwells with great delight on the actions of St. Swithen as chancellor: see also Dr. Giles' early history of Britain.

The Britons, Anglo-Saxons, and Danes, were, he says, of kindred tribes, and our common law strikes deep its roots into the history and usages of the Anglo-Saxons, but the praise of every thing that was Saxon, and vituperating everything Norman, he thinks is nothing but a traditionary repetition of the ancient but groundless appeal from political animosity to popular credulity.

The lecturer says,—

"It would be tedious were I to enumerate

<sup>b</sup> *Davies v. Lowndes*, 3 C. B. 808.

<sup>c</sup> *Hambridge v. De la Croude*, 3 C. B. 742.

<sup>d</sup> *Kent v. Great Western Railway Company*, 3 C. B. 724.

the various Saxon principles and institutions which have entered into our common law; in truth, we meet with Saxon elements at every turn; some indeed of those most familiar to the historian have gradually disappeared: the responsibility of the superior for his men or his family has passed away, that of the district for the maintenance of the peace still exists in the liability of the hundred for injuries during riot; that of the clergy to the secular tribunal was one of those Saxon liberties which Norman kings were glad to vindicate. On the other hand, Peter-pence and tithes were both introduced under the Saxons; forest laws existed in the time of the Saxons; and the royalties of wreck, treasure-trove and straye, are Saxon: accordingly the simple-hearted author of the *Myrror* classes the evasion of them among the deadly sins; the protection of transactions in market overt may be inferred from the numerous and reiterated restrictions contained in the Saxon laws: the binding of bargains by a godspenny, and the usual mode of spending it, the recognition of the control under which the wife stands in relation to her husband, and the legal consequences of it, and the germs of a law of settlement of the poor, are all of them Saxon. In point of history, it is more important to observe that they had an imperfect system of tenures and a nascent institution of chivalry, which the French jurists regard as corresponding with the state of things in France during their Merovingian period; add to this a legal inequality of ranks, and an extensive practice of what is called commendation, whereby the great majority of those who were free but not noble commended themselves to the protection of some lord, temporal or ecclesiastical, whose vassals they thereby became, and we have a state of society closely resembling that which on the continent of Europe had ended in producing the feudal system."

He now speaks of the feudal system, so wonderful in its effects. There is a great question whether it was originally introduced in England before or after the Norman Conquest. Mr. Hall gives it as his opinion that the feudal system was gradually introduced into Europe, and in some measure into England, before the Conquest, but the security of Norman rule brought forward a more perfect feudal system. Perhaps something more might have been said of the Norman conquest and the great changes it made.

The learned lecturer's reading and researches led to the more favourite subject of the Crusades. He gives an excellent account of the laws or assizes of Jerusalem,—a venerable code. They were from the French law, with certain improvements. They were one of the good things of the Crusades, amid the barbarity, cruelty, and misery of the time. The most ancient

MS. of the assizes of Jerusalem exists in Vienna.

The lecturer says,

"It were idle to attempt to trace particular customs as they arose in the Anglo-Norman period, it will suffice if we pay some attention to the transition from the modes of trial, which prevailed alike with Saxon and with Norman, to existing judicial proceedings, more especially trial by jury, which is the key-stone of our common law as it is now practised.

"You will remember that the court of ordinary resort under the Saxons was the County or Hundred Court, whilst among the Normans it was the Lord's Court, and that, by a custom of very general adoption, the particular court before which any given suit must be brought was that of the Lord of the defendant. You will at once perceive that the principle of trying issues of fact by the moral balance of the evidence was alone wanting, to convert the proceeding before the Saxon tribunal into something very like a trial by the country, whilst the proceeding before the Norman tribunal was literally a trial of the defendant by his peers. Under both systems there were exceptional instances approaching still more nearly to the trial by jury; and it would require only a little enthusiasm to insist on the trial by the inquest, on appeals of murder, on which, according to the Norman custom, the appellee had a right to insist, as equivalent thereto both in form and substance. Of two of the old modes of trial, one, compurgation, was abolished in criminal cases by Henry II., the other, ordeal, was forbidden by the Council of Lateran, A. D. 1215: meanwhile, the trial by battle had also almost disappeared before the well-conceived reforms of Henry II., or his Justicier, Glanvil.

"I have already intimated that trial by battle was a mere regulation of that right of forcible reprisal which must and will exist in all cases where the law does not provide another remedy. The tendency of all law is by degrees to remove the parties from personal participation in the contest; still there must always be some right of direct recaption, without having recourse to a legal proceeding. The common law, until modified by the statutes of forcible entry, allowed this to a very considerable extent. If a man was rejected, being himself on the spot, he had a few days allowed '*vires resumere, arma congerere, et auxilia amicorum invocare*,' and reinstate himself by force: if he were absent, he had a longer time allowed him, according to the place of absence; if he were gone to Jerusalem, he was allowed three years out of England, and nineteen days after his return. This turned on the legal idea attached to the word *seisin*, or possession; a man was not diseised by the mere forcible or clandestine entry of a stranger, but he became so by his own laches if he did not re-enter forthwith, in which case he was left to his writ of right. But in one part of feudal Christendom, circumstances did not permit the reservation of the remedy by writ of right to its full extent, I mean in the kingdom of Jerusalem; for if the

recovery by that proceeding had been allowed there after any considerable lapse of time, the government would have been exposed to this inconvenience, that the very military tenants who held their estates for the purpose of being continually present to resist a restless enemy, might absent themselves in the hour of danger, and, when that was over, return and recover their fees by writ of right from those who had really performed the condition of the tenure: Godfrey of Bouillon therefore limited one year as the period within which a writ of right must be brought, but at the same time established the assizes of Novel Disseisin and Mort d'Ancestre, by which a party ejected or excluded, otherwise than by process of law, from his own seisin or that of which his ancestors died seised, might, on application to the court within forty days, be reinstated in his seisin, leaving the question of right still to be decided in the ordinary form of law; and these were called possessory actions, because the possession alone and not the right of property could come in question. These possessory actions Henry II. introduced into the law of England, but allowed much longer intervals; the technical foundation was a writ to the sheriff, directing him to summon a jury of twelve to inquire into the fact of the seisin and heirship alleged, and if the facts were found in the affirmative, the claimant was put in possession, leaving the other party to bring his writ of right; but the same king, at the same time, made this important modification in that proceeding also, that he left it to the defendant, if he thought proper, to have the right tried by the grand assize, or a jury of recognitors, instead of the trial by battle."

The lecturer hath availed himself of many foreign and recent books on the subject he has so ably treated, and the lecture will be read with advantage by students in general, as an additional introduction to their Blackstone.

## TAXES ON JUSTICE.

### COURT OF CHANCERY.

The following are extracts from recent returns to parliament:—

Clerk of Enrolments, and Clerks of Records and Writs.

*Return of John Alexander Berrey, one of the Clerks of Record and Writs in the High Court of Chancery.*

Aged, 76 years.

|   |       |   |   |
|---|-------|---|---|
| Total amount received as clerk of records and writs since the passing of the act 5 & 6 Vict. c. 103, for salary under that act, to the 3rd day of February, instant | 6,316 | 6 | 1 |
| And for compensation under this act   | 245   | 9 | 2 |
| Total amount received during the same period for compensation as one of the late examiners of the said court  | 1,100 | 0 | 0 |

|  |    |   |    |
|--|----|---|----|
| Total amount received during the same period of poundage in respect of the Income Tax imposed upon payments made out of any funds of the suitors of the said court | 91 | 7 | 11 |
|--|----|---|----|

|  |   |    |   |
|--|---|----|---|
| The like for poundage on the one shilling and six penny duties | 6 | 10 | 9 |
|--|---|----|---|

J. A. BERREY.

10th February, 1848.

*Return of David Drew, the Clerk of Enrolments in Chancery.*

Age 56 years and upwards.

|  |        |    |   |
|--|--------|----|---|
| Total amount received for salary and compensation under the act 5 & 6 Vict. c. 103, to the 3rd day of February instant | 14,620 | 18 | 8 |
|--|--------|----|---|

|  |     |   |    |
|--|-----|---|----|
| Total amount received as poundage in respect of the Income Tax imposed upon payments made out of any funds of the suitors of the said court since passing the said act | 140 | 6 | 10 |
|--|-----|---|----|

D. DREW.

*Enrolment Office, Chancery Lane, February, 8, 1848.*

*Return of John Veal, one of the Clerks of Records and Writs of her Majesty's High Court of Chancery in England.*

Age, 40 years and upwards.

|   |       |   |   |
|---|-------|---|---|
| Received for salary and compensation, from the 28th October, 1842, to the 3rd Feb. 1848 | 7,011 | 0 | 3 |
|---|-------|---|---|

JOHN VEAL.

*Return of Frederick Bedwell, one of the Clerks of Records and Writs of her Majesty's High Court of Chancery.*

Age, 35 years and upwards.

|   |       |    |   |
|---|-------|----|---|
| Amount received for salary under the act 5 & 6 Vict. c. 103, from the 28th October, 1842, to 3rd February, 1848 | 6,316 | 16 | 1 |
|---|-------|----|---|

FREDERICK BEDWELL.

7th February, 1848.

*Return of Seth Charles Ward, one of the Clerks of Records and Writs of her Majesty's High Court of Chancery in England.*

Age, 35 years and upwards.

|  |       |    |   |
|--|-------|----|---|
| Amount received for salary as Clerk of Records and Writs, under the act 5 & 6 Vict. c. 103, from the 28th day of Oct. 1842, to the 3rd Feb. 1848 | 6,316 | 16 | 1 |
|--|-------|----|---|

SETH CHARLES WARD.

7th February, 1848.

### SIX CLERKS.

|  |   |                       |
|--|---|-----------------------|
| Edward Vernon Utterson                   | } | Compensation of       |
| William Turton                           |   |                       |
| Henry Gawler                             |   |                       |
| I have no documents or information in my |   | 1,577l. 18s. 4d. each |



office to enable me to return the ages of the late Six Clerks.

I. J. JOHNSON,  
Solicitor to the Suitors' Fund.

# TAXING MASTERS IN CHANCERY.

The following items are extracted from a Return made by the Taxing Masters on the 4th February:—

Received since the passing of the 5 & 6 Vict. c. 103, (1842).

|                        |         |    |    |
|------------------------|---------|----|----|
| Geo. Gatty, (retired). | £       | .  | d. |
| Salary                 | £10,027 | 3  | 5  |
| Compensation           | 26,235  | 17 | 1  |

|                        |  |  |  |        |    |    |
|------------------------|--|--|--|--------|----|----|
|                        |  |  |  | 36,263 | 0  | 6  |
| Henry R. Baines . . .  |  |  |  | 36,188 | 15 | 11 |
| Richard Mills . . .    |  |  |  | 32,992 | 11 | 7  |
| John Wainewright . . . |  |  |  | 30,083 | 4  | 3  |

|                         |  |  |  |          |    |   |
|-------------------------|--|--|--|----------|----|---|
|                         |  |  |  | £135,457 | 12 | 3 |
| Philip Martineau . . .  |  |  |  | 10,027   | 3  | 5 |
| Robert B. Follett . . . |  |  |  | 10,027   | 3  | 5 |

£155,511 19 3

These sums have been paid out of the Suitors' Fee Fund during the last five years.

With regard to the salaries of 2,000*l.* a year, there are different opinions, as well among the judges as the practitioners, whether the Fee or the Consolidated Fund should bear the burden; but we presume every body must agree, that the *compensations* for sinecures created in former times should not be inflicted on the poor suitors of the present day. The fees collected to pay these compensations, come in the first instance from the pockets of solicitors, and finally (if they are able to pay) from the suitors, who have also to defray the fees and charges of counsel, solicitors, and witnesses.

We have a hundred times urged the injustice of these exactions, but the progress of truth is slow, and we must keep the subject constantly in view.

## MEETING IN LYON'S INN HALL ON THE CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—I beg to call your attention to a report contained in the number of the "Law Times" for the 26th of February, of a meeting at Lyon's Inn Hall, for taking steps to obtain the Repeal of the Certificate Duty, and to an article in that journal with reference to the meeting. The following are a few remarks that have occurred to me on the subject, which I submit for your consideration.

It is to be observed that the *gist* of the deliberations at the meeting differs much from that of the arguments in the "Law Times."

In that paper the object seems to be to apply the matter to an attack upon the Incorporated Law Society, for the purpose of exalting itself. It is not necessary to repeat the statements made. I presume that those who are unacquainted with the particulars will not take as *proved* that which is merely *alleged*. To those who are acquainted with the facts a more than common absence of due information as to the operations of the Law Society will be apparent. So far from the society not having moved to obtain the repeal, I should have supposed it had been pretty generally known that long previous even to the institution of the "Law Times," much had been done by the Law Society in furtherance of that object—that it is now actively so engaged—and that there is every reason to look for a favourable result ultimately from those very labours.

The difficulties that exist present themselves to some extent in the little that passed at the Lyons Inn meeting. Much care and painstaking and deliberation in the course to be pursued are, from the circumstances of the case, of vital importance, and any immature or ill-advised proceedings must evidently be most prejudicial. In the present aspect of the subject of taxation, this applies with peculiar force.

To turn to the meeting itself: what was done at it? The gentlemen who addressed it disagreed upon the principle even upon which they were to act, and decided upon nothing. A nameless committee was appointed. Surely there is not much in that. It is true an honorary secretary was nominated, but no great things can be expected from an isolated individual, however well he may be disposed.

The matter, I should think, cannot be in better hands than those of the council of the Incorporated Law Society.

That ill results would attend "a house being divided against itself," is a doctrine of high authority. One would have concluded that it is obvious that no good purpose could be attained where the co-operation of London solicitors is, admittedly, essential to the success of the work, by endeavouring to create complaints against the Law Society, numbering, as it does, about one half the London profession, and including in its members more than half in point of influence and respectability.

Let us have the cause, "the good cause," advocated in every way, and from any and all quarters, but let that advocacy be of "the right sort."

A TOWN MEMBER of the Incorporated Law Society.

## PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

For the usual List of Bills in Parliament, and their progress during the past week, *vide* the *Postscript*, third page of the cover.

## NOTES OF THE WEEK.

## NEW MASTER IN CHANCERY.

Sir Giffin Wilson has resigned his office as one of the Masters of the Court of Chancery, and Richard Torin Kindersley, Esq., Q. C., has been appointed in his stead.

Sir Giffin was called to the Bar on the 30th of June, 1789, and appointed a Master on the 23rd March, 1826. He was formerly a Commissioner of Bankruptcy and Recorder of Windsor.

Mr. Kindersley was called to the Bar on 10th February, 1818, and was promoted to the rank of Queen's Counsel in the year 1834. He ranked next after Mr. Spence, and before Sir Fitzroy Kelly.

## COLONIAL LAW OFFICERS.

James Shirreff, Esq., has been appointed Attorney General of Antigua.

The Hon. J. B. Uniacke, has been appointed Attorney-General, and W. T. Des Barrs, Esq., Solicitor-General of Halifax, Nova Scotia.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Clark v. Freeman.* Jan. 31, 1848.

INJUNCTION.—UNAUTHORISED USE OF NAME.

*The court will not restrain the unauthorized use of the name of any person, where no actual or probable injury to his property can be shown to arise from the use of it.*

THIS was a motion by Sir James Clark to restrain the defendant from selling certain pills as "Sir James Clark's Consumption Pills," or circulating hand-bills advertising the pills by that description. The motion was supported by an affidavit of Sir James Clark, in which he denied having in any manner authorized the sale of the pills, and stated that he had caused some of them to be analysed, and found that they consisted principally of mercury and antimony, ingredients which in many cases of consumption he considered to be injurious. The advertisements issued by the defendant were calculated, from the extravagant nature of the claims set up for the pills, to bring Sir James Clark's medical reputation into discredit with any reasonable person who believed him to have authorized the sale of them. There was a slight attempt on the part of the defendant to disguise Sir James Clark's name by spelling it Clarke, but the circumstances of Sir James Clark's well-known reputation in consumptive cases, the use by the defendant of the Royal Arms in reference, apparently to Sir James's office of Physician to the Queen, and the fact of the defendant not appearing to oppose the motion though served with notice, left no doubt as to the identity of Sir James with the person in whose name the pills were sold. The defendant, in his advertisement, described himself as agent, implying, though not stating expressly, that he was agent to Sir James.

Mr. Turner and Mr. Wickens, for the motion, contended that the use thus improperly made by the defendant of Sir James Clark's name might do him an injury for which an action for damages would lie, (Vin. Abr. Action on Words, S. a. 11, p. 453,) and that in every case in which damages would lie an injunction could be obtained;—that Sir James Clark would

have no means of restraining the wrong done to him at law, if the defendant chose to persist in it, except by bringing a multiplicity of actions, which was of itself a ground for the interference of a court of equity;—that the right to an injunction against the unauthorized use of the name of one person by another did not depend upon the circumstance of the plaintiff being able to derive a profit from the act sought to be restrained, as appeared from *Lord Byron v. Johnston*, 2 Mer. 29, where an injunction was granted against the publication under Lord Byron's name of poems not written by him, in which, therefore, he could not possibly have any property;—and that a pecuniary interest, analogous to that possessed by Lord Byron in the case cited, existed here, since the act of the defendant tended to prevent Sir James Clark, if he chose, from selling the right to vend pills under his name to another person, and thus prospectively to injure what might be a valuable property to him;—That even at present his profit as a physician was derived from vending directions for making pills, so that to sell pills as made by his direction, when they were not, directly interfered with his business;—Lastly, that the relief asked was analogous to the restraining the use by one person of trade-marks belonging to another. *Croft v. Day*, 7 Bea. 84; *Knott v. Morgan*, 2 Keen. 213; *Perry v. Truefit*, 6 Beavan, 67.

Lord Langdale said, that he did not think he had jurisdiction to restrain the act complained of. He did not see how he could assume it without assuming the jurisdiction to restrain the publication of a libel. The ground upon which the present injunction was asked was, that the act of the defendant was indirectly calculated to damage Sir James Clark's reputation; and certainly if any one could believe that he sanctioned the advertisements in question, their publication would be a species of defamation of Sir James; but so was a direct libel. In all the cases referred to there was some injury done to property, and it was to cases of this description that he considered the remedy by injunction to be confined. If the annoyance to the individual by the unauthorized use of his name were a ground for the interference of the court, there could not have

been a stronger case than that of the publication of Mr. Southey's *Wat Tyler*, where, nevertheless, Lord Eldon refused to interfere, (*Southey v. Sherwood*, 2 Mer. 438). If Sir James Clark had been in the habit of making a profit by selling pills, the case would have come within the authority of *Lord Byron v. Johnston*; but, as the case stood, he saw no injury done to Sir James Clark's property, and as he considered that the court had no jurisdiction to restrain the publication of a libel, he must refuse the present application.

**Vice-Chancellor of England.**

*Ex parte Craven.* Feb. 16, 1848.

**EQUITY OF REDEMPTION.—TRUSTEES.—PAYMENT OF MONEY OUT OF COURT.—REFERENCE AS TO TITLE.**

*Where a tenant for life of certain lands, with remainder to his children in strict settlement, offers to pay out of his own pocket one portion of the purchase-money for certain other lands to be settled to the same uses, the other portion to be paid by a sum of money in court: the court will not order the money to be paid to the tenant for life on his undertaking without a reference to the Master as to title.*

*Trustees are not justified in investing trust-money in the purchase of an equity of redemption.*

UNDER the will of the late Lord Craven bearing date the 9th Dec., 1785, Richard Keppel Craven was entitled to an estate for life, with remainder to his first and other sons in tail male, with remainder to the right heirs of the testator, in certain estates in Gloucestershire. R. K. Craven never married, and the remainder in fee simple was now vested in the present Earl of Craven. In September, 1839, the Cheltenham and Great Western Union Railway Company purchased some of the settled estates for 1,200*l.*, and paid the purchase-money into the Bank of England, with the privy of the Accountant-General, pursuant to their act of parliament; and by an order of court the 1,200*l.* was invested in 3 per cent. reduced bank annuities. The parties were desirous of purchasing an adjoining estate for 2,800*l.*, and of applying the 1,200*l.* in part payment of the purchase-money, and of making up the deficiency by a mortgage of the estate to be purchased, and a petition was now presented stating the foregoing facts and that a Mr. C. Goodwyn had agreed to advance the remainder of the 2,800*l.* on mortgage of the purchased estate, and that instructions had been laid before counsel to prepare a proper draft for the purpose of conveying the legal estate in the premises to the said Charles Goodwyn, subject to redemption on repayment of the amount of his advance, and for limiting the equity of redemption therein in the same manner as that in which the lands sold to the company would have stood limited had the sale not taken place; and it prayed that the bank annuities

might be sold, and the money arising from the sale paid to R. K. Craven on his undertaking to apply them in the manner proposed, or that the money might be paid to the vendor of the estate upon his executing a proper conveyance of the estate to the same uses, &c., as those which would then have affected the lands sold to the company had no such sale taken place, subject to a mortgage in fee to the said C. Goodwyn for securing that portion of the purchase-money which he should advance. The Cheltenham and Great Western Union Railway Act, 6 W. 4, provided that the compensation money for lands purchased should be paid into court, there to remain "until the same should upon application be laid out by the order of the said court, made in a summary way as aforesaid, in the purchase of other lands, which should be conveyed, limited, and settled to, for, and upon such and the like uses, &c., as the lands which should be so purchased, &c., stood limited."

Mr. Wickens appeared for the petition.

Mr. Bevir for the company.

The Vice-Chancellor refused to grant the petition on the ground that it asked for the investment of money in court in the purchase of an equity of redemption, an investment which trustees were not justified in making. The petition was subsequently amended, stating that Mr. Craven would pay out of his own pocket the rest of the purchase-money without entering into any mortgage of the estate, and it prayed that the estate might be conveyed to the uses of the will.

Mr. Wickens asked that, on Mr. Craven giving an undertaking, the money might be paid to him without taking a reference to the Master as to the title, stating that this course had been adopted in other branches of the court.

The Vice-Chancellor refused to make the order without a reference.

**Vice-Chancellor Knight Bruce.**

*Barton v. Haynes.* Jan. 25, 1848.

**PRACTICE.—SUIT PENDENTE LITE.**

*Semble, that where a suit is instituted by executors in this court pending litigation respecting the will in the Ecclesiastical Court, the suit should not be brought to a hearing until the litigation in the Ecclesiastical Court is disposed of.*

THIS was a suit instituted by the executors of the will of Mr. J. B. Haynes, in consequence of the litigation of the son and widow of the testator in the Ecclesiastical court, whereby the executors were prevented from obtaining probate; and it prayed, among other things, that a receiver should be appointed. A receiver was accordingly appointed, and the cause was brought to a hearing by the plaintiffs, together with a petition by them for an inquiry as to certain costs incurred by them in the preservation of the furniture and other effects, part of the testator's estate, and also for an inquiry as

to what would be a proper sum to be allowed for such purposes for the future.

*Russell and Shebbeare* for the plaintiffs.

*Bacon*, for the defendants, said, that this suit should not have been brought to a hearing until the suit in the Ecclesiastical Court had been disposed of.

*Vice-Chancellor*. I would rather not make a decree in this suit until the hearing of the cause in the Ecclesiastical Court, but I can make a reference as to the furniture and other effects. Let the cause stand over until the first day of Trinity Term next, with liberty to apply. His Honour then made an order upon the petition, referring it to the Master to make certain inquiries upon the subjects mentioned in the petition.

*Harvey v. Renon*. Jan. 27, 1848.

PRACTICE.—PRO CONFESSO.—ABSCONDING.—DEFENDANT.—SETTING DOWN CAUSE.

*A defendant had absconded, and the cause appeared in the cause paper for the day to be taken pro confesso, but, no one appearing, it was struck out. The court, upon the application of the plaintiff, allowed the cause to be restored to the paper.*

THE defendant in this cause had absconded, and on the 25th of January, the cause appeared in the paper to have a decree taken *pro confesso*. No one, however, appearing when the cause was called on, it was struck out. On the 26th of January,

*J. W. Smith*, for the plaintiff, applied to the court to have the cause restored to the paper, citing *Baker v. Keen*, 4 Sim. 498, in support of the application.

The *Vice-Chancellor* said, that he felt some difficulty in acceding to the application, in consequence of the absence of the defendant.

*J. W. Smith*, on the following day, stated that the registrars considered that the cause might be restored as proposed.

The *Vice-Chancellor* said, that he still doubted whether it was not necessary to have the cause set down again; but from a feeling of deference to the registrars, though against his own impression, he would permit the cause to be put at the head of the paper for a future day.

Queen's Bench.

(Before the Four Judges.)

*Lewis v. Harris*.

INSOLVENT.—PLEADING.—VESTING ORDER.

*A plea under the 5 & 6 Vict., c 116, s. 4, setting out all the particulars antecedent to the grant of a final order, and the granting thereof for the protection of the person of the insolvent, and the vesting of his estate in the official assignee, was held good, though it did not mention nor refer to the creditors' assignees.*

THIS was an action by the drawer against the acceptor of three bills of exchange at nine months date. There were counts for money

lent and on an account stated. The defendant pleaded the following plea from under the 5 & 6 Vict. c. 116, an act for the relief of insolvent debtors.

The defendant says, that after the making of the said promises, and accruing of the causes of action in the declaration mentioned, and before the commencement of this suit, to wit on the 16th June, 1843, the defendant not being a trader within the meaning of the statutes in force relating to bankrupts at the time of the making and passing of the act of parliament hereinafter mentioned, &c., having resided 12 calendar months in London under and by virtue of, and according to the directions and provisions of a certain statute, entitled, an act for the relief of insolvent debtors, duly presented his petition for protection from process to the Court of Bankruptcy in London, which said petition during all the time herein in that behalf mentioned had annexed to it a full and true schedule of the defendant's debts, and the same schedule and petition then were pursuant to, and then duly contained all the matters in that behalf mentioned in the said statute, according to the form and effect thereof, and the same petition, bearing date to wit on the 16th June, 1843, was forthwith afterwards, to wit on the day and year last aforesaid, duly and according to the form and effect of the said statute filed of record in the said Court of Bankruptcy. And the defendant further says, that such proceedings were thereupon had in the same court upon the said petition of the defendant, pursuant to the said statute, and in all respects conformable thereto, that afterwards and before the commencement of this suit, to wit on the 28th August, 1843, according to the form of the said statutes, and pursuant thereto, a final order for protection and distribution was then made by a commissioner duly authorised in that behalf, by R. C. Fane, Esq., for the protection of the person of the defendant from all process, and for the vesting of the estate and effects of the defendant in T. M. Alsager, one of the official assignees of the said Court of Bankruptcy; and the defendant further saith, that the several debts in the declaration mentioned, and each and every of them were contracted, and the causes of action in the declaration mentioned, arose before the said date of the said filing the said petition, and that the said order and discharge still remain in full force, and in all respects valid in law, and this the defendant is ready to verify, &c.

To this plea there was a demurrer on the ground that it does not sufficiently show the jurisdiction of the Court of Bankruptcy to make the order. The plea alleges that a final order for protection and distribution was made by a certain commissioner of bankrupts, and for the vesting the estate and effect of the defendant in one of the official assignees of the court; whereas, the 4th section of the act enacts that the commissioner has only power to make an order for the protection of the person of the defendant from all process, and for the vesting of his estate and effects in an official

assignee to be named by such commissioner, together with an assignee to be chosen by the majority in number and value of the creditors who may attend before the commissioner on a certain day.

Mr. Archbold, in support of the demurrer. The plea does not follow the general form pointed out by the 8th section of the act, but states the facts specially, which do not bring the case within the provisions of the statute. This is an order made by an inferior jurisdiction. *Sheen v. Garrett*,<sup>a</sup> *Nichols v. Payne*,<sup>b</sup> *Leaf v. Robson*.<sup>c</sup>

Mr. Cowling, in support of the plea. The plea alleges that the order was made by a commissioner duly authorised, and it may be presumed that no creditors did attend unless the contrary was shown. In *Cook v. Henson*,<sup>d</sup> a plea under the statute was held good, though it did not show any of the particular matters now asserted to be requisite. The plea, in vesting an order, need not state all the matters which show that order to be valid.

Mr. Archbold was heard in reply.

Mr. Justice Coleridge afterwards delivered the judgment of the court. We are of opinion that in this case the plea contained all that is required by the provisions of the 5 & 6 Vict. c. 116, so as to come within the case of *Cook v. Henson*,<sup>e</sup> and that it contained also a sufficient allegation of a final order for vesting the effects of the debtor in the official assignee. The final order might perhaps be void in form and effect if it omitted to mention the creditors' assignee. *Nicholls v. Payne*,<sup>f</sup> but the plea which alleges that such an order was made may be valid without introducing that matter. The plea need not set out the form of the final order. Though we have not any judicial knowledge of the form of the order, still it is clear that the final order may be silent as to the vesting of the effects in particular persons, and may leave that to the operation of the statute. Now what this may be, will be seen by reference to the effect of the 7 & 8 Vict. c. 96. By the 10th sect. of that statute the official assignee shall have all the rights of the creditors' assignees until such assignees have been chosen by the creditors and approved of by the commissioner. He may therefore possess all the powers stated in this plea. There no creditors' assignee may have been chosen, and till that had been done the effects of the insolvent would vest in the official assignee. The objection, therefore, fails, and the plea is complete and valid, for if the part objected to was struck out, it would not be thereby vitiated. Under these circumstances there must be judgment for the defendant.

Judgment for the defendant.

## Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

*Ex parte Cooke.* Jan. 28, 1848.

COURT ROLLS OF A MANOR.—MANDAMUS TO STEWARD TO ALLOW INSPECTION BY CLAIMANT TO PROPERTY WITHIN THE MANOR.

*Where a claimant to copyhold property comes to the court for a mandamus to compel the steward of the manor to give him inspection of the court rolls, and admit him as a copyholder to enable him to try his right to the property he claims, he must either swear positively that he is entitled to the property he claims, or set out his title, or good grounds for his belief that he is entitled to the property, in the affidavit used in moving for the rule. It is insufficient to swear "that he verily believes" that he is entitled to the property in question.*

Whitchurst, Q. C., moved for a rule calling on John Goate Fisher to show cause why a mandamus should not issue directed to him, commanding him to allow one John Cooke the elder to inspect the court rolls of the manor of Sherringham, Norfolk, and take an abstract from the same, and also to admit the said John Cooke as a copyholder to a certain mansion, lands and premises within the said manor, of which the said T. G. Fisher was the steward. This application was made on the affidavits of John Cooke the elder and his son, which stated, "that he the said John Cooke the elder, of Costessey, verily believed that he is legally or equitably entitled to a certain mansion, messuages, cottages, lands, and hereditaments, situate at Sherrington, in the county of Norfolk, and copyhold of the manor or manors of Sherrington aforesaid; that in the year 1836 a court was about to be holden for the said manor, at the Red Lion Inn, at Sherringham, at which the said John Goate Fisher was to preside as steward; that the deponent and his son, John Cooke the younger, went to the Red Lion Inn aforesaid, and there saw the said J. G. Fisher, Esq., and requested him to allow the deponent to inspect the court rolls of the manor of Sherringham, as he believed that he was entitled to some property within the manor; he therefore wished to be allowed to inspect the court rolls, take an abstract of some part thereof, and to be admitted to be a copyholder, and deponent stated that he was ready to pay any fees which might be payable for the same. Upon this, Mr. Fisher required a description of the property to which the deponent laid claim, which the deponent then gave him as being in the possession of Henry Rayney Upsher, Esq., the lord of the manor of Sherringham aforesaid, and then required Mr. Fisher to admit him as a copyholder to the said premises. This, however, Mr. Fisher refused to do, telling him that he had better go and see Mr. Upsher about the matter. Upon this, the deponent went and saw Mr. Upsher, who said he should

<sup>a</sup> 6 Bing. 686. <sup>b</sup> 2 Dowl. & Lownd. 629.

<sup>c</sup> Id. 646. <sup>d</sup> 1 Common Bench Rep. 908.

<sup>e</sup> 1 Com. Bench 908, 14 Law J. C. P. 295.

<sup>f</sup> 7 Man & Gr. 927. <sup>g</sup> 8 Scott N. R. 732, 15. Law J. C. P. 23.

have nothing to do with the matter, but that he must apply to Fisher. He, deponent, then went back to the Red Lion, and found that in his absence the court had been opened and closed, and on his applying again to Fisher to allow him inspection of the court rolls, Fisher said it was too late then, and that he must come some other time. The deponent did subsequently apply to Mr. Fisher at his house, and again in the year 1841, but on both occasions refused inspection of the court rolls. It was now submitted that here there was a clear refusal by the steward of the manor to allow Mr. Cooke to inspect the court rolls, or to admit him as a copyholder to the lands and premises he claimed, which was a great hardship upon him, as it prevented him from trying the question of whether he was entitled to the property he claimed. Now, it was clear that if the applicant is a copyholder in the manor, he has a right to inspect the court rolls, and if this inspection is refused him, the proper mode of redress is for him to come to this court for a *mandamus*. *Re v. Tower*, 4 M. & S. 162. The application to be admitted as a copyholder was a necessary step to enable him to try his right to the property he claimed by ejectment, and it is submitted that he is clearly entitled to that.

*Erle, J.* I see by the affidavits that the applicant only swears that he believes that he is entitled to the property in question. That is not enough; he must either swear positively that he is entitled to the property, or must show his title to it in the affidavits. I know of no authority to show that any claimant to copyhold property is entitled to inspect the court rolls without swearing that he is entitled to the property, or showing some grounds for the belief that he is entitled to it. If you could make out some ground to the belief sworn to, you would be entitled to the rule, but upon the present affidavits I do not think you are.

Rule refused.

#### Exchequer.

*Harris v. Lawrence.* Jan. 27, 1848.

*Parker v. Crouch.* Jan. 29, 1848.

COUNTY COURTS ACT.—9 & 10 VICT. C. 95,  
(s. 129).

*Where an action was brought in a superior court, after an order in council constituting a county court for the particular district, but before such county court came into operation, and application was made to this court for the purpose of depriving the plaintiff of costs, on the ground, that the sum recovered in the action (covenant) was only 5*l.*, the court refused the rule, upon the ground, that at the time when the action was brought, there was not a county court in operation in which a plaint might have been entered in pursuance of the act.*

*And so when there was a County Court*

*already in existence, but which was not in operation under the statute 9 & 10 Vict. c. 95. Harris v. Lawrence.*

A RULE had been obtained, calling upon the plaintiff to show cause why a suggestion should not be entered on the roll to deprive him of the costs, under the Small Debts' Act (the 9 & 10 Vict. c. 95, s. 129). It was an action for a breach of covenant by non-repairs. The writ was issued on the 10th March, 1847, and on the same day an order in council appeared in a supplement to the Gazette constituting a court under that act, for the Middlesex district, within which both plaintiff and defendant resided. This court was to come into operation on the 15th of the same month.

*Crowder* showed cause against the rule. It was contended, on behalf of the defendant, that this action should have been brought in the county court, under the 9 & 10 Vict. c. 95, the 129th sect of which enacts, that "*if any action shall be commenced after the passing of this act, in any of her Majesty's superior courts of record, &c. for which a plaint might have been entered in any court holden under this act, and a verdict shall be found for the plaintiff for less than 20*l.*, if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the plaintiff shall have judgment to recover such sum only and no costs,*" &c., because, it was said, the moment this act passed, any party who had a cause of action for less than 20*l.* upon a contract, was prevented from suing in the superior courts, and was bound to wait until the order of council had passed and judges were appointed for the county courts; until, in fact, those courts were in full operation. This certainly could not be the interpretation to be put upon the words of the statute. [*Alderson, B.* The act of parliament did not constitute the courts, but merely gave the capacity to form them. *Pollock, Lord C. B.* The words are, "for which a plaint might have been entered in any court holden under this act," it therefore must be a court in existence under the act, at the time of the action brought, in which a plaint might at that time have been entered.]

*Charnock*, in reply. The writ was sued out after the passing of the act. [*Pollock, L. C. B.* How do you show there was a court in which the plaintiff could have proceeded?] This he was not bound to show, the county courts were not at the time established. In the words of the 129th sect., "if any action shall be commenced after the passing of this act," &c. "for which a plaint might have been entered," &c. The words "might have been entered," had no reference to time, they meant any action, the entry of which was within the jurisdiction of the court. Every act of parliament takes effect from the day on which it receives the Royal Assent, unless specially provided otherwise: in 33 G. 3, c. 13, for instance, where no time was mentioned in the act, it came into operation from the time of passing. [*Parke, B.* It does not signify here: it is said an action was brought in the superior court, when it might and should have gone

into the county court : but the party could not have proceeded in the county court, for such a court was not at that time in existence.] Since their lordships entertained so strong an opinion on the subject, he would not argue it further ; but he submitted, the rule should not be discharged with costs, the question arising upon the construction of a new act of parliament.

The court however discharged the rule with costs.

PARKER v. CROUCH.

In this case also a rule had been obtained, calling on the plaintiff to show cause why he should not bring the postea into court and file the plea roll, in order that the defendant might enter a suggestion to deprive him of costs, pursuant to 9 & 10 Vict. c. 95, s. 129. This was an action commenced subsequently to the passing of that act, and to the order in council creating a County Court for the district in which the plaintiff might have sued, but before the appointment of any clerk to such court.

*Bovill*, in support of the rule. This case differed from that of *Harris v. Lawrence*, inasmuch as here there was an original County Court in which the plaint might have been levied. No new court was created by the statute, it merely operated to enlarge and regulate the jurisdiction of the old County Court. That this was different from the appointment of fresh courts for the recovery of small debts appeared from the preamble of the act, which recites that the County Court is a court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount, by virtue of a writ of justices issued in that behalf ; and that the proceedings in the County Courts are dilatory and expensive ; and that it is expedient to alter and regulate the manner of proceeding in certain courts for the recovery of small debts and demands ; and that the courts established under certain acts of parliament should be holden as branches of the County Court, under the present act. [*Pollock*, C. B. Was there any clerk to the court ?] No, there was not. [*Pollock*, C. B. Then look to the 59th section, which directs all plaints under the act to be entered in a book kept by the clerk of the court. *Parke*, B. How can you enter a plaint unless there is a person to receive it ?] He thought the words there used, "for which a plaint might have been entered," were descriptive of the cause of action, and not of the act of entering the plaint.

*Parke*, B. This was in reality a rehearing of *Harris v. Lawrence*. Here, as in that case, there was no court holden under the act in which the plaintiff could have levied a plaint, and there could not be because the act was not at the time in operation.

The rest of the court concurred.

Rule discharged with costs.

Bankruptcy.

*Ex parte Meyer, In re Meyer and Brownsmith.*  
February 19, 1848.

PROOF OF DEBT PAYABLE UPON CONTINGENCY.

Held, by Commissioners *Evans* and *Shepherd*, (*Fate dissentiente*.) that when the bankrupts gave an indemnity bond, but no default had taken place, and no debt was in fact due at the date of the fiat, there was no contingent debt proveable within the meaning of the stat. 6 Geo. 4, c. 16, s. 56.

THIS case was argued before a subdivision court, consisting of Commissioners *Evans*, *Fane*, and *Shepherd*. The facts and arguments are sufficiently stated in the judgments of the learned commissioners, who, it appears, were not unanimous.

Mr. Commissioner *Evans* began by stating the facts as follow :—In this case Frederick Meyer seeks to prove against the joint estate of Edward Simeon Meyer and Thomas George Brownsmith, against whom a fiat issued on the 26th of October, 1847, under the following circumstances. The sum of 750*l.* was lent by the Victoria Insurance Company to Edward Simeon Meyer, and it was stipulated by the bond given at the time of the advance by E. S. Meyer, and by Frederick Meyer and Joseph Trueman as sureties, that the principal and interest should be paid by three several instalments. It was also stipulated, that an insurance should be effected on the life of E. S. Meyer, for the sum of 1,500*l.* The foundation of the present claim is a deed, dated the 29th of June, 1847, by which the bankrupts covenanted to pay the trustees of the insurance company, obligees of the bond, the interest of the 750*l.*, the premiums on the policy, and the principal money, by instalments. It is afterwards covenanted, that if the bankrupts make default, and Frederick Meyer or Trueman should be damnified, they would indemnify them. The deed on which the proof is sought to be made is, in effect, a mere deed of indemnity, and at the time of the bankruptcy, no default had taken place, no debt was in fact due by the bankruptcy, either to Frederick Meyer or the insurance company. It is true the insurance company need not have accepted the 750*l.*, except under the conditions stated in the bond ; and, on the other hand, the sureties might have been unable to pay, in which case no debt could ever have existed. In these circumstances, and upon the authority of the decided cases the proof is not admissible. In *ex parte Marshall*, 1 Mont. & Ayr. 118 ; 3 Deacon & Chitty, 120, it was decided that where the bankrupt had given an indemnity bond, and the amount of the damage was not ascertained when the fiat was issued, there was no debt proveable. *Green v. Bicknell*, 8 Ad. & Ellis, 701 ; *Thompson v. Thompson*, 2 Bing. N. C. 168. In *ex parte The Lancashire Canal Company*, 1 Mont. 27, 1 Mont. & Bligh, 94, the Lord Chancellor says : "I also think that



this cannot be considered a contingent debt within the meaning of the 6 Geo. 4, c. 16, s. 56, because there was no existing debt; and it has already been determined by the Court of King's Bench, that there must be an actual debt dependent on a contingency to give a right of proof under the clause in question." The learned Commissioner also referred to the cases of *Clements v. Langley*, 5 Barnewall & Alderson, 272; *Abbott v. Hughes*, 5 Bing. N. C. 588; *Lane v. Burghart*, 3 Man. & Gr. 597; *Eaton v. Acraman*, 2 Man. & Gr. 410; and *Attwood v. Partridge*, 4 Bing. 209. If these decisions were wrong, he (Mr. Commissioner Evans) should feel himself bound by them, but in his judgment they had been rightly decided. Nevertheless, he agreed with those who thought that a bankrupt's certificate ought in all cases to discharge him from contingent debts, but this was a matter for the consideration of the legislature and not for the courts. He should only add, that he considered the debt in question proveable upon the separate estate of Edward Simeon Meyer, he being the original debtor; but the bankrupt Brownsmith, not being surety to the insurance office, and only a party to a deed of covenant to indemnify his sureties in case he should not perform his agreement with the insurance company, no proof could be admitted on the joint estate.

Mr. Commissioner *Shepherd* expressed his concurrence in the judgment of Mr. Commissioner Evans, founding his opinion on the case of *ex parte Marshall*, already cited.

Mr. Commissioner *Fane* commenced by expressing his regret at being compelled to differ from his brother commissioners. The admission of contingent debts to proof, however, was a subject on which great difference of opinion existed, from 1728 (*ex parte Caswell*, 2 P. Wms. 497) to 1843 (*Ex parte Harrison, re Gales*, 1 De Gex, 100). The question might be considered with reference to five distinct points.

1st. What was the mischief that the 56th sec. of 9 Geo. 4, c. 16, was intended to remedy; 2ndly, the language of the statute; 3rdly, whether it embraced the present case; 4thly, the state of the decisions; and, 5thly, whether proof in such cases would introduce any practical evils? As he conceived, the mischief intended to be remedied was, the injustice of taking the bankrupt's property up to the date of his certificate, and yet leaving him personally liable for debts which had grown due between the date of the fiat and the date of the certificate, in respect of contracts in existence at the date of the fiat.\* He dwelt at some length on the hardship such practice involved, and adverted to the effect which would arise in this very case, observing that if the proof were excluded, the unfortunate bankrupts, after having surrendered all their property, would remain personally liable for near 800l. The 56th section of the statute was intended to embrace two classes of cases:—1st, Contracts by bankrupts to pay upon a contingency

which had not happened, but was capable of valuation; and, 2ndly, similar contracts upon contingencies which had happened before the proof was tendered, and in which the difficulty of valuation was removed by the happening of the contingency. He considered the present to be a case of the latter class, he knew it had often been insisted that the words in the statute, "debt payable upon a contingency," required the existence of an actual debt at the date of the fiat, but it was impossible such could have been the meaning of the word "debt" as used in the statute, because the words "payable upon a contingency" excluded the strict meaning of the word "debt." Perhaps "debt payable upon a contingency" was a contradiction in terms, for where there was a contingency, there could be no debt, and where there was a debt, there could be no contingency. Still, every treatise on the bankrupt laws contained a chapter headed "of contingent debts," and a liability to pay an uncertain sum in an uncertain event was the judicial definition of "a contingent debt," as appeared by what fell from the judges in *Hockley v. Merry*, Strange, 1043; *Ex parte Merit*, 14 Ves. 190; and *Ex parte Alecock*, 1 Ro. 323. It appeared to him, therefore, that the words "contingent debt" were used in the statute in a sense to include a debt on a guarantee. No doubt the case cited of *ex parte Marshall*, 1 Mon. & Ayr. 118, was against this view, but he had always and still considered that case not to be law, it operated in fact to repeal the statute, and he entirely concurred in the principles expounded in the note to the case of *ex parte Marshall*, printed in the appendix to Montagu and Ayrton. In opposition to the case last cited, he founded his judgment on the case of *ex parte Meyers*, Mont. & Bligh. 229, which was the case of a proof on a guarantee, and had never been overruled. On the contrary, it was affirmed in *ex parte Simpson*, 1 Mon. & Ayr. 541, approved of by Tindal, C. J., in *Thompson v. Thompson*, 2 Bing. N. C. 168, and treated as a subsisting authority by Vice-Chancellor Knight Bruce in the late case of *ex parte Harrison, re Gales*, 1 De Gex, Appendix, 100. This view of the case he conceived was in accordance with justice, with the opinions of Lord King in *ex parte Caswell*, 2 P. Wms. 497, of Lord Hardwicke in *ex parte Groome*, 1 Atk. 117, and with the true intention of the statute. The admission of such proofs need not delay dividends, for until the contingency actually happened, there would be neither right of proof nor right of claim. It would do justice in nineteen cases out of twenty, and if the twentieth case were unprovided for, it might be regretted, but could not be helped. In his opinion, the best rule was that which secured justice in the greatest number of cases.

A majority of the commissioners of whom the court was composed being against the admission of the proof, it was rejected.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## PLEADING.

## ABATEMENT.

See *Defamation*.

## ADMINISTRATOR.

In an action against an administrator, the plea that the defendant *is not nor ever hath been administrator, &c.*, properly concludes with a verification, being undistinguishable in this respect from the like plea by an executor. So held by the Court of Queen's Bench on special demurrer, and by the Court of Exchequer Chamber, on error from the Queen's Bench. *Scott v. Wedlake*, 7 Q. B. 766.

Cases cited in the judgment : *Walker v. Woollaston*, 2 P. Wms. 576 ; *Hensloe's case*, 9 Rep. 40 ; *Holiday v. Fletcher*, 2 Stra. 731 ; *Coulter's case*, 5 Rep. 30, n.

## AMBIGUITY.

See *Amendment*, 2.

## AMENDMENT.

1. *After judgment on demurrer*.—In assumpsit, the declaration stated that the plaintiffs had consigned wheat to the defendants, who were corn-factors, for sale on account of the plaintiffs ; that the defendants promised the plaintiffs to obey and observe the lawful orders and directions of the plaintiffs, to be given by them to the defendants, in regard to the sale and disposal of the wheat ; and that, although the plaintiffs ordered the defendants not to sell below a certain price, and although the same was a lawful order and direction on that behalf, yet the defendants, not regarding their promise, sold at a less price.

Plea, that, after the delivery of the wheat to the defendants, they became and were under advances to the plaintiffs in respect thereof ; that they gave the plaintiffs notice that they required to be paid such advances, and that in default they should sell the wheat and repay themselves ; and that, although a reasonable time had elapsed, the plaintiffs did not repay them such advances ; whereupon the defendants, for the purpose of reimbursing themselves, sold the wheat for the best prices that could then be obtained for the same, &c. :

*Held*, that the plea was bad in substance, there being nothing in the transaction disclosed upon the record, from which it could be inferred that it was part of the contract that at any time the wheat should be forfeited, or the defendant's authority to sell enlarged, so as to enable them to sell for repayment of advances, without reference to its being for the interest of the principals to sell at that particular time, and for that price. Leave granted to add pleas, alleging the sale to have been for the plaintiff's

benefit, upon payment of costs. *Smart v. Sanders*, 3 C. B. 380.

2. *After judgment on demurrer*.—*Bankrupt*.—*Render*.—*Ambiguity*.—To an action against a surety upon a bond given under the 1 & 2 Vict. c. 110, s. 8, the defendant pleaded, that, after the making of the bond, and before the commencement of the suit, the plaintiff brought an action against the principal in *B. R.*, and recovered judgment against him, and issued a *ca. sa.* thereon, under which the principal was taken ; that the latter thereupon caused himself to be brought up by *habeas corpus* before a judge, "who then, and before any breach of the condition of the bond, and before the time for the principal rendering himself according to the practice of the said court, and the said condition had expired, and according to the said practice of the said court, committed him into the custody of the marshal, in execution at the suit of the plaintiff upon the said judgment ;" that the marshal received and kept him in execution as aforesaid, according to the practice of the said court, until and after the return day of the *ca. sa.*, for a long space of time, to wit, hitherto ; and that, from the time of the recovery of the said judgment, until he was so taken under the *ca. sa.*, the principal was always ready and willing to render himself according to the practice of the court and the said condition, and whilst he remained in custody as aforesaid, was ready and willing to render himself, and would have rendered himself accordingly, *but that he was prevented by the plaintiff from so doing, in manner aforesaid* :

*Held*, that if the plea was to be regarded as a plea of performance, it was bad, for not stating distinctly that the principal did render himself according to the practice of the court ; and that, if it was to be considered as a plea in excuse, it was equally bad for not distinctly alleging that the act of the plaintiff, in suing out the *ca. sa.* against the principal, made it impossible for him to render—the court not taking judicial notice that the issuing of that writ was any impediment to a render. Additional plea allowed to be pleaded, after judgment for plaintiff on demurrer, and with affidavit of merits. *Hayward v. Bennett*, 3 C. B. 404.

## ANNUITY.

See *Memorial of*.

## ASSIGNMENT, NEW.

*When necessary*.—Trespass for breaking and entering plaintiff's close, called, &c., and cutting down and prostrating 100 yards of his rails there standing. Plea, a public right of way over the close, and that defendants were

using the said way, and because the said rails were wrongfully erected upon, and standing in and obstructing the said way, they prostrated the same, &c., which are the same supposed trespasses, &c. Replication, that the said rails were not standing in the said way, in manner, &c. Issue thereon. The defendant had cut down some rails of the plaintiff standing on a public highway in the close described, and other rails belonging to him, which were in the same close, and not on the highway: *Held*, that the plaintiff could not recover; for, by taking issue on a plea which restricted the matter of dispute to the highway, he had excluded himself from proof as to rails in any other part of the close; and, to recover for these, he should have new assigned. *Bracegirdle v. Peacock*, 8 Q. B. 174.

Cases cited in the judgment: *Bowen v. Jenkin*, 6 A. & E. 911; *Greene v. Jones*, 1 Wms. Saund. 299, 300, note (6).

See *De Injuriâ: Justification: Right of Way*.

#### BILL OF EXCHANGE.

1. *Payment into court*.—To a declaration containing a count on a bill of exchange for 26*l.* 13*s.* 2*d.*, and also an indebitatus count for 30*l.*, the defendant pleaded, amongst other pleas, as to 10*l.* 9*s.* 1*d.*, parcel of the sum in the first count, and also as to 10*l.* 9*s.* 1*d.*, parcel of the sum in the second count; payment into court of 11*l.*, and no damages ultra: *Held*, bad on special demurrer, as payment of a smaller sum is no satisfaction of a greater.

*Semble*, that where there is a count on a bill of exchange, and also a count for the consideration, a plea of payment into court should state that the bill was given on account of the debt in the second count, and then plead payment into court of the amount of the bill and interest. *Tattersall v. Parkinson*, 4 D. & L. 522.

Cases cited in the judgment: *Jourdain v. Johnson*, 2 C. M. & R. 564; *Down v. Hatcher*, 10 A. & E. 121.

2. *Satisfaction of debt*.—Debt for money lent, and on an account stated. Plea, as to 100*l.*, parcel, &c., that after that sum had become due, and before the commencement of this suit, the defendant made his promissory note for the payment to the plaintiff's order of 100*l.*, six months after date, and delivered the same note to the plaintiff, who then took and received the same for and on account of the said sum of 100*l.*, parcel, &c., and the causes of action in respect thereof: *Held*, bad, on general demurrer, for not averring that the note was still running, or that it had been indorsed over by the plaintiff.

*Semble*, the plea was not bad for not averring distinctly that the note was delivered by the defendant, as well as accepted by the plaintiff, for and on account of the debt. *Price v. Price*, 16 M. & W. 232.

Cases cited in the judgment: *Hansard v. Robinson*, 7 B. & Cr. 90; *Stedman v. Gooch*, 1 Esp. 4; *Kearslake v. Morgan*, 5 T. R. 513; *Richardson v. Rickman*, (cited) id.; *Reynolds v. Davies*, 1 Bos. & P. 625; *Wain v. Bailey*, 10 A. & E. 616.

#### BILL OF EXCEPTIONS.

When exceptions are taken to the direction of a judge, it is not enough to state in the bill of exceptions that he declined to direct the jury in the way suggested, without showing what his direction was. *M'Alpine v. Mangnall*, 3 C. B. 496.

#### CO-DEFENDANT ABROAD.

*Statute of Limitations*.—Declaration, in assumpsit, reciting a writ issued on 28th Nov. 1843, charged, that heretofore, "to wit, on the 29th day of Dec., A. D. 1830," defendant contracted that he would, "within 12 months from a certain day, to wit, the day and year aforesaid," supply the plaintiff with certain articles. Breach, that defendant "did not nor would, within 12 months from the said day, to wit, the day and year aforesaid," supply the articles. Plea, that the cause of action did not accrue within six years next before the commencement of the suit. Replication, that defendant, when the action accrued, was beyond the seas, and that the action was commenced within six years of his first return after such accruing. Rejoinder, that the promise was made by defendant jointly with *W.*; that, after the accruing of the action, and more than six years before the commencement of the suit, *W.* was in the kingdom, and might have been sued.

On demurrer to the rejoinder, *Held*,

1. That the declaration was substantially good, the averments showing that 12 months had elapsed before the action. And, further, that the plea might be resorted to, as showing that the 12 months had so elapsed.

2. That the rejoinder was no answer to the replication; for that, under stat. 4 Anne, c. 16, s. 19, if a right of action accrue against several persons, one of whom is beyond seas, the Statute of Limitations does not run till his return, though the others have never been absent from the kingdom. *Fannin v. Anderson*, 7 Q. B. 811.

Cases cited in the judgment: *Parkinson v. Whitehead*, 2 M. & G. 329; *Brooke v. Brooke*, 1 Sid. 184; *Perry v. Jackson*, 4 T. R. 516.

#### COMPOSITION DEED.

*Tender*.—In assumpsit, the defendant pleaded, that, after the causes of action accrued, the defendant and *M.*, who was jointly liable with him to the plaintiff, became unable to pay their creditors in full; and thereupon it was agreed by the defendant and *M.*, the plaintiff, and the other creditors, that a composition of 4*s.* 6*d.* in the pound should be paid upon their debts, and that, upon receiving that sum, the plaintiff and the other creditors should execute to defendant and *M.* a general release; that a deed of release was prepared for execu-

tion, and that the creditors, except the plaintiff, received the composition, and executed the release; that the defendant has always been ready to pay the plaintiff the composition of 4s. 6d. in the pound upon his executing the release, of which plaintiff had notice, and was requested by defendant to accept the composition and execute the release: *Held*, bad for not showing that the defendant and *M.* offered to pay the defendant the composition money, or tendered the release to him for execution. *Rosling v. Muggeridge*, 16 M. & W. 181.

## DECLARATION.

**Commencement of.**—The rule, Reg. Gen., M. T., 3 W. 4, r. 15, as to the commencement of declarations is compulsory, and therefore a declaration not disclosing whether the plaintiff proceeds in person or by attorney, is irregular. An application to set it aside should be made at chambers, and not to the court, even in Term time. *White v. Feltham*, 4 D. & L. 454.

## DEFAMATION.

**Bankers.**—*Plea of abatement.*—Declaration stated, that petitioner was a banker in partnership with *A.* and *B.*, and that defendant falsely and maliciously spoke words of plaintiff, and of him in his said trade, imputing to him insolvency; by means whereof plaintiff was injured in his good name, and divers persons believed him to be indigent, and refused to deal with him in his said trade, and one *C.* withdrew his account from the bank of plaintiff and his said partners.

*Plea in abatement:* that plaintiff carried on the said business jointly and undividedly with *A.* and *B.*, and not otherwise, and that all the damage in the declaration mentioned accrued to *A.* and *B.* jointly with plaintiff, and not to him alone; and that, at the time of the commencement of the suit, *A.* and *B.* were living, &c.

*Held*, bad, because it was pleaded in terms to damage, and not to the cause of action, and the special damages to the partnership was not so essentially the cause of action, that without it the action could not have been maintained.

*Quere*, whether the declaration would have been bad on special demurrer, for blending a cause of action vested in the plaintiff simply with a cause common to the partners. *Robinson v. Marchant*, 7 Q. B. 918.

## DE INJURIA.

**New assignment.**—*Duplicity.*—Case. Second count in trover for goods, to wit, 10 pieces of timber. 5th plea, as to the pieces of timber in the 2nd count mentioned, that they were obstructing a public navigable river, and defendant having occasion to navigate, &c., removed the said pieces of timber, &c., which are the same grievances, &c. Replication as to the 5th plea, which is pleaded to the causes of action in the 2nd count mentioned, and so far as they relate to the pieces of timber in the 2nd count mentioned, that defendant of his own wrong, &c., committed the grievances, &c., so

far as they relate, &c., in manner and form, &c.: and new assignment, the plaintiff sued, not only for the grievances in the 5th plea mentioned, &c., but also for, &c., alleging trover and conversion of pieces of timber other than, and different from those in the 5th plea mentioned, and that defendant, for another and a different cause than that in the 5th plea stated, converted the last-mentioned goods in manner and form as the plaintiff hath above declared, &c.

*Held*, on special demurrer, that the replication was not bad for duplicity or as enlarging or departing from the declaration; and was well pleaded. *Page v. Hatchett*, 8 Q. B. 187.

Case cited in the judgment: *Bowen v. Jenkin*, 6 A. & E. 911; *Greene v. Jones*, 1 Wms. Saund. 299, 300, (6th ed.)

And see *Assignment, New.*

## DEMURRER.

See *Amendment; Issues.*

## DUPLICITY.

See *De Injuria.*

## ERROR.

The Court of Queen's Bench gave a judgment for defendant, which the Court of Error upheld, but the judgment in B. R. was entered up, erroneously, that the writ be quashed. The Court of Error reversed the judgment, and gave judgment, that the plaintiff take nothing by his writ, and that the defendant go thereof without day. *Scott v. Wedlake*, 7 Q. B. 756.

See *Issues in Fact.*

## ISSUES IN FACT.

*Demurrer.*—*Writ of error.*—Where there are issues in fact, as well as in law, on the same record, and the defendant has obtained judgment on demurrer to pleas going to the whole cause of action, but the issues in fact remain untried, the court will not compel the defendant to enter up judgment of *nil capiat per breve* before the trial of the issues in fact, in order that the plaintiff may bring a writ of error without trying the issues in fact. *Hinton v. Acraman*, 4 D. & L. 462.

Case cited in the judgment: *Lowe v. King* Wms. Saund. 30, r.

## JUSTIFICATION.

**Several trespasses.**—*New assignment.*—Declaration charged that defendant, to wit, on 1st Jan. 1844, with force and arms, "assaulted" plaintiff, and "then," with great force, &c., seized and shook plaintiff, and dragged him about, and struck him many blows, by means of which he was hurt and wounded, and was sick, &c., and so continued for a long time, to wit, one week, &c.

*Plea 2.* That defendant was lawfully possessed of a close, and a gate belonging to it, and plaintiff, a little before the time when, &c., with force and arms, and with a strong hand, and against the will of defendant, attempted to

break open, and did then thereby unlawfully break open, the gate, and in breach of the peace did thereby attempt forcibly to enter and unlawfully trespass upon the close, and would then unlawfully and forcibly, &c., have effected such attempt, if defendant had not defended his possession; whereupon defendant, being in his close during the unlawful attempt, defended his possession and resisted such attempt; and, because he could not successfully resist without in a slight degree committing the trespasses, he did a little unavoidably, &c., commit the trespasses in the declaration, using no unnecessary force, which are the trespasses complained of.

Plea 3. That defendant was lawfully possessed of a cow being in a certain close, and plaintiff, a little before the time when, &c., did, against the will of defendant, endeavour to drive away, and dispossess defendant of, and was driving away from the close, the cow, and dispossessing defendant of the same, and would then unlawfully, forcibly, and in breach of the peace, have driven away, and dispossessed defendant of, his said cow; wherefore defendant, &c., (justifying as before, *mutatis mutandis*).

On demurrer to the replication, *held*,

1. That the trespass on the part of the plaintiff being alleged by the pleas to be forcibly made, the justification was sufficient, though it was not alleged that the plaintiff had been requested to desist.

2. That the pleas were not objectionable for omitting to show a good justification of the wounding.

3. That the third plea was not objectionable for omitting to show that the cow was on defendant's close.

*Held*, also, that the declaration showed only one trespass committed on a single occasion; and, therefore, that, to the above pleas, the plaintiff could not reply both *de injuria*, and also, that defendant committed the trespasses in the declaration on other occasions than those in the pleas mentioned. On special demurrer to the replication for duplicity. *Polkinhorn v. Wright*, 8 Q. B. 197.

Cases cited in the judgment: *Earl of Manchester v. Vale*, 1 Wms. Saund. 24; *Burgess v. Freelove*, 2 B. & P. 425; *Greene v. Jones*, 1 Wms. Saund. 299, &c.; *Green v. Goddard*, 2 Salk. 641; *Weaver v. Bush*, 8 T. R. 78.

#### LIBEL.

1. In case for libel, the declaration alleged the libel to be, that plaintiff sought admission to a club held in the town of P., and gave an entertainment a few days before he was to be elected, as he thought; that three days after he stood the ballot and was black-balled; that next morning he *bolled*, and some of the poor tradesmen had to lament the fashionable character of his entertainment. Plea, that plaintiff did suddenly leave and quit the town of P. without paying every one and all of the debts contracted by him with *divers* persons in the said town, and without notice to them, and with intent to defraud and delay *some* of the last-

mentioned persons, whereby the said persons remained unpaid and defrauded: *Held*, bad, on special demurrer, for not stating the names of the persons alleged to have been defrauded.

The declaration also averred, that the libel used the words "black legs" and "black sheep," to denote persons guilty of fraud, and that divers persons had formed a club called "The Royal Western Yacht Club;" that defendant, intending to cause it to be believed that plaintiff was a confederate of persons guilty of fraudulent play at cards, and of being black legs and black sheep in the sense aforesaid, in a certain newspaper, &c., published of and concerning the plaintiff the following libel:—"Royal Western Yacht Club.—Expulsion of two black legs," (meaning an expulsion from the club of two persons being black legs in the sense in which that word was used as aforesaid). The declaration then alleged, that suspicion had attached to two members (meaning the aforesaid two persons) of the club, owing to two gentlemen having been plucked at cards, at the residence of one of the two suspected members, in a manner seeming to indicate foul play; that inquiry took place, which resulted in expelling the two suspected persons; that a person, known to be a confederate of the expelled parties, sought admission into the club. His name was O'B. (meaning thereby the plaintiff): *Held*, on motion in arrest of judgment, that, as matter shown to be libellous by prefatory averment was so coupled with innuendoes in the declaration as to show it to have been published by the defendant of and concerning the plaintiff, the declaration need not aver it to be also published of and concerning the Royal Western Yacht Club, or any other part of the prefatory averment. *O'Brien v. Clement*, 16 M. & W. 159.

Cases cited in the judgment: *Janson v. Stuart*, 1 T. R. 748; *Hickinbotham v. Leach*, 10 M. & W. 362; *Alexander v. Angle*, 1 C. & J. 143; 1 Tyr. 9; 7 Bing. 123; 11 M. & W. 295.

2. A libellous paragraph published of the plaintiff in a newspaper, stated (in substance) that he was a confederate of black legs; that he had sought admission into a yacht club; that he gave an entertainment in the expectation of being elected, but was black-balled, and the next morning *bolled*, and some of the tradesmen in the town had to lament the fashionable character of his entertainment. A plea of justification, after alleging facts to show that the plaintiff was the confederate of persons who had been guilty of cheating at cards, and the facts of his giving an entertainment, and of his being black-balled, as mentioned in the libel, &c., stated that on the following morning "he *quitted* the town and neighbourhood, leaving divers of the tradesmen, to whom he owed money, unpaid," (naming them:) *Held*, bad, inasmuch as such *quitting* might be innocent, and without any intention to defraud. *O'Brien v. Bryant*, 16 M. & W. 168.

#### LIMITATIONS, STATUTE OF.

See *Co-defendant Abroad*.

## MEMORIAL OF AN ANNUITY.

*Verification by the record.*—A replication taking issue on a plea alleging that no memorial of an annuity had been inrolled, and setting forth such memorial, properly concludes with a verification by the record. *Thompson v. Lack*, 3 C. B. 540.

Case cited in the judgment: *Richardson v. Tomkies*, 9 Bingh. 61; 4 M. & Sc. 56.

## NON-ASSUMPSIT.

To a count upon a contract by the defendant to receive a certain quantity of wool from the plaintiffs at a certain price, the defendant pleaded, that, at the time of making the contract, the plaintiffs produced a sample, and promised the defendant that the bulk was equal in quality and description thereto, but that the wool when tendered was found to be of inferior quality, wherefore the defendant refused to accept it: *Held*, that the plea was not bad, on special demurrer, as amounting to *non assumpsit*, inasmuch as the contract therein set up was not necessarily incompatible with the contract declared on. *Sieveking v. Dutton*, 3 C. B. 331.

## PAYMENT INTO COURT.

*Commencement of plea.*—A plea of payment into court must be pleaded, in its commencement, to the further maintenance of the action; and if it be pleaded to the maintenance of the action generally, this defect is not, upon special demurrer, cured by its concluding to the further maintenance of the action. *Rosling v. Muggeridge*, 16 M. & W. 181.

See *Bill of Exchange*, 1.

## PROMISSORY NOTE.

*Delivery on payment of debt.*—Debt by payee against maker of a promissory note, with counts for money lent, interest, &c. Plea, as to 100*l.*, parcel of the moneys in the second and subsequent counts, that defendant, before the commencement of the suit, made his promissory note for payment to the plaintiff's order of 100*l.*, six months after date, and delivered the same to the plaintiff, who then took and received the same for and on account of the said sum of 100*l.* Replication, that the period of six months, specified in the said note, expired before the commencement of the suit, and the note became then due and payable; yet the defendant hath not paid the same. On demurrer to the replication, *Held*, that the plea was bad, as it did not aver that the note was not due, or that it had been indorsed to a third person.

*Semble*, that the plea was not bad for omitting to state that the note was given, as well as received, on account of the debt. *Price v. Price*, 4 D. & L. 537.

Cases cited in the judgment: *Hansard v. Robinson*, 7 B. & C. 90; *Stedman v. Gooch*, 1 Esp. 3; *Kearslake v. Morgan*, 5 T. R. 513; *Richardson v. Rickman*, 5 T. R. 517; *Reynolds v. Davies*, 1 B. & P. 625.

## PUIS DARREIN CONTINUANCE.

A plea *puis darrein continuance*, pleaded on or after the 1st day of the sitting at *nisi prius*, must be pleaded in form as a plea at *nisi prius*, and delivered to the judge; and where it was pleaded as a plea in banc, and delivered to the attorney on the other side on the 1st day of the sitting, and the plaintiff, treating it as irregular, proceeded to trial as if no such plea had been pleaded, and obtained a verdict, the court refused to set the verdict aside. *Payne v. Shennstone*, 4 D. & L. 396.

See *Release*.

## RELEASE.

*Puis darrein continuance after a demurrer.*—*Quere*, whether it is competent to a defendant to plead a release *puis darrein continuance* after a demurrer to his rejoinder to a replication to one of several pleas originally pleaded to the action. *Wright v. Burroughes*, 3 C. B. 344.

*Effect of new assignment.*—Trespass for breaking and entering the plaintiff's close, and damaging the fences, &c. Plea of justification under a right of way. New assignment, that the action was brought for a trespass on a certain other portion of the said close, setting out that portion by abutments. Plea to the new assignment, that before the said time when, &c., and whilst the defendant so had the right to the said way in the first plea mentioned, the plaintiff obstructed the way in the first plea mentioned, by digging a trench across the same, and because the defendant could not remove the obstruction, he did, for the purpose of avoiding the same, and using the way, depart out of the same, along the said other portion of the close in the new assignment mentioned, and because the said fences in the new assignment mentioned were standing on a portion of the close in the new assignment mentioned, and that without breaking and damaging the same he could not go over the residue of the said close in which, &c., he did necessarily a little break and damage the said fences, &c. Replication *de injuriâ*: *Held*, (*Platt, B., dissentiente*,) 1st, That the right of way stated in the plea to the declaration was not admitted by the plaintiff in his new assignment; and 2ndly, that the right being reasserted, though informally, in the plea to the new assignment, it was put in issue by the replication, so as to throw the onus of proving it on the defendant. *Robertson v. Gantlett*, 16 M. & W. 289.

Cases cited in the judgment: *Norman v. Westcombe*, 2 M. & W. 349; *Brancker v. Molyneux*, 1 M. & G. 710.

## SEVERAL COUNTS.

*Demurrage.*—*Account stated.*—Since the General Rule, Hil., 4 W. 4, pt. 2, art. 6, a count on a charter-party, going for demurrage and detention of the ship, cannot be joined

with a common count on an account stated, and the latter count will be struck out as in "apparent violation" of the above rule. *Mathewson v. Ray*, 16 M. & W. 329.

## TENDER.

See *Composition Deed*.

## TOWN CLERK'S ACCOUNTS.

*Remedy for not delivering*.—Case. Declaration stated that defendant, after 9th November, 1835, and after the first election of councillors under stat. 5 & 6 W. 4, c. 76, was appointed and acted as town clerk of the borough of L., and continued to be and act as such town clerk, until the expiration of his office by his lawful removal; that, after such removal, and within three months after the expiration of defendant's office, the council of the borough, in pursuance of the statute, fully authorised and appointed A. to receive from defendant, and required defendant to deliver to A. a true account in writing of all moneys committed to defendant's charge as such town clerk, by virtue of the act, and also of all moneys, &c., together with proper vouchers, &c., and also a list of the names of debtors, &c.; of which premises defendant, within the three months, had notice, and was, within the three months, required by A., pursuant to the authority, to deliver the said matters and things which A. was so authorised to receive; that since defendant had such notice, &c., and within the three months, a reasonable time for the delivery had elapsed; that before the expiration of defendant's office, to wit, on, &c., divers matters and things were committed to his charge under the act, and for the corporation, viz., certain deeds, &c.; that during the time aforesaid, defendant received moneys amounting, &c., by virtue of and for the purposes of the act, and had not tendered any account thereof to plaintiff; and that, before and at the expiration of defendant's office, there were divers persons from whom moneys were due for the purposes of the act, which ought to have been received and accounted for to plaintiff by defendant, but who had not paid the same: Breach, that though it was defendant's duty to deliver the said matters and things to A., and A. all the time continued to be authorised to receive them, defendant had not delivered them to A.; by means whereof plaintiffs were kept in ignorance of matters which ought to have been contained in the account, list, and vouchers, and had been prevented from obtaining money which they might have obtained if defendant had performed his duty, and from carrying on the business of the corporation: *Held*, on special demurrer, that an action on the case for breach of duty lay against the defendant, and that plaintiffs were not restrained to the summary remedy, under stat. 5 & 6 W. 4, c. 76, s. 60, before justices of the peace. And that the appointment of A. to receive the several matters and things, and the defendant to deliver them, were sufficiently alleged. *Mayor of Lichfield v. Simpson*, 8 Q. B. 365.

## TRESPASS.

*Colour*.—*Reversion*.—*Condition*.—*Vi et armis*.—Trespass *quare domum fregit*. Plea, that M. being seised in fee of the messuage in the declaration mentioned, demised to L. for 21 years, who demised it to the defendant for the residue of that term less one day. It then gave colour that "under colour of a charter of demise, pretended to be made to the plaintiff, whereas nothing passed by it," &c.; and then justified the trespass. Replication, that before the demise to the defendant by L., he demised to F. for 3 years, and that F. assigned his term to the plaintiff. Rejoinder, that the demise to F. was subject to a proviso for re-entry preserved to L., his executors, administrators, and assigns, in case of non-repair; that the messuage was not kept in repair, and the defendant entered in pursuance of the proviso: *Held*, 1st, that the defendant was an assignee within the 32 Hen. 8, c. 34, and could therefore avail himself of the condition of re-entry; 2ndly, that, although livery of seisin is rendered unnecessary by the 8 & 9 Vict. c. 106, s. 2, in order to pass an estate of freehold, the colour given by the plea did not show a title in the plaintiff; 3rdly, that the allegation *vi et armis* does not import a breach of the peace; and 4thly, that the matter alleged in the rejoinder was not a departure from the plea. *Wright v. Burroughes*, 4 D. & L. 438.

Cases cited in the judgment: *Taunton v. Costar*, 7 T. R. 431; *Matures v. Westwood*, Cro. Eliz. 599, 617; *Chaworth v. Phillips*, Moore, 876.

See *Justification*.

## TROVER.

Vesting in defendant of the property in the chattel converted by him to his own use, upon that conversion being established by a judgment recovered against him in an action of trover. Plea, of a former recovery in an action against a third party.

A recovery in trover vests the property in the chattel in the defendant as against the plaintiff.

In trover by A. against B. for a bedstead, B. pleaded a former recovery by A. in trover for the same identical bedstead against C.; averring that the conversion by C., for which that action was brought, was a conversion not later in point of time than the conversion mentioned in the declaration against B., and that, before the conversion in that declaration mentioned, C., being possessed of the bedstead, sold it to B., who paid him for the same, and received it under such sale, and that the taking under such sale was the conversion complained of in the declaration against B.: *Held*, that this plea was a good answer to the action. *Cooper v. Shepherd*, 3 C. B. 266.

Cases cited in the judgment: *Adams v. Broughton*, 2 Stra. 1078; *Andrews*, 18; *Bird v. Randall*, 2 Burr. 1345; *Comyns v. Boyer*, Cro. Eliz. 485; *Leyfield's case*, 10 Co. Rep. 90, l.; *Unwin v. St. Quentin*, 11 M. & W. 277.



# The Legal Observer

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 11, 1848.

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———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## NEW BILLS BEFORE PARLIAMENT. —PROTECTION OF JUSTICES' BILL.

THE scope and objects of four separate bills laid upon the table of the House of Commons, shortly after the re-assembling of parliament, by the Attorney-General, were briefly adverted to in a former number, (*ante*, p. 390). The bills have since been printed, and regard being had to the subject-matter of the proposed enactments, as well as to the changes introduced by them in law and practice, it must be admitted the bills are one and all deserving of careful consideration on the part of, the magistracy, the legal profession, and the legislature. Of the four bills, that which strikes us as far the most important in reference to its effects upon public and private rights, is that entitled "A Bill to protect Justices of the Peace from Vexatious Actions for Acts done by them in the execution of their office."

The intention of the proposed measure, as appears from the preamble, is to preserve justices of the peace, acting in the *bond fide* exercise of what they may have conceived to be their duty, from vexatious actions, reserving, nevertheless, to a party injured by any act of a justice, the right to maintain an action, where the justice has acted maliciously, and without reasonable or probable cause. It may be safely conceded, that justices are fairly entitled to the protection here contemplated, so far as such protection is compatible with the security of individuals in respect to their liberty, property, and character. It may be doubted,

however, whether some of the provisions of the proposed bill would not operate to abridge the rights of parties injuriously affected by the acts of magistrates, and to deprive them of those remedies which the existing law affords, where a justice acts, inadvertently, negligently, or without due caution and circumspection, although not corruptly or maliciously. As this bill, in common with the others presented to parliament by the Attorney-General, has been referred to a select committee, consisting of the Hon. and Learned Mover, together with Mr. Henley, Mr. Clifford, Sir John Pakington, Mr. Langston, Mr. Cripps, Mr. Wrightson, Mr. Robert Palmer, and Sir John Guest, it would be idle to anticipate the alterations that may be introduced in it, or the shape it may assume when it is again brought under the consideration of the House. All that can be done at present is, to direct attention to the leading provisions of the bill as it is printed, a knowledge of which will enable our readers to appreciate the spirit in which the subject will be dealt with by the committee.

The bill begins by enacting, that every action brought against any justice, for any act done by him in the execution of his duty with respect to any matter within his jurisdiction, shall be on the case, and it shall be expressly alleged in the declaration that such act was done maliciously *and* without reasonable or probable cause, and if at the trial upon the general issue pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuited, or a verdict given for the defendant. In every case in which a

justice acts within the scope of his jurisdiction, therefore, to entitle the plaintiff to recover, he must prove, not only that the defendant acted without reasonable and probable cause, but *also* that he acted maliciously. The expediency of throwing this twofold shield around justices is somewhat questionable. The race, of which Justice Shallow is the dramatic incarnation, may not yet be extinct; but we think too highly of this class of the magistracy to suppose that they need the protection of the law to such an extent, that no man can maintain an action unless he is prepared to prove that the justice has acted wickedly as well as absurdly. It were much better and more intelligible at once to enact, "without more," that no action should be maintainable against a justice for anything done by him in the execution of his office.

The second section provides, that for any act done under a conviction or order made, or warrant issued, by a justice, in a matter in which he has not jurisdiction, or in which he shall have exceeded his jurisdiction, no action shall be brought until the conviction shall be quashed; or, if the warrant be followed by an order or conviction, until the order or conviction shall be quashed; and it is further provided, that if a justice issues a warrant for an alleged indictable offence, and the person against whom the warrant issues has been summoned personally or by leaving the summons at his abode, and does not appear according to the exigency of the summons, no action shall be maintained against the justice for anything done under such warrant. Bearing in mind that this section contemplates no other cases but those in which a justice has acted without jurisdiction, or has exceeded his jurisdiction,—in other words, where he has acted illegally—the difficulties sought to be thrown in the way of the party aggrieved in seeking to obtain redress are of a very serious nature. If the illegal act of the justice arises upon an order or conviction, the order or conviction must be quashed, either upon appeal, or by application to the Queen's Bench, as a proceeding preliminary to bringing the action. Those who have any practical acquaintance with such matters know, that an order or conviction cannot be quashed, either upon appeal, or by application to the Queen's Bench, without considerable expense and delay, and the bill under consideration does not point out how the injured party is to be reimbursed or indemnified for the expense to be incurred in quashing the conviction or order; but the

9th section fixes the period of limitation in actions against justices at "six calendar months next after the act complained of shall have been committed;" so that if the conviction or order is not quashed within that period, the right of action is at an end. The proviso which takes away the right of action against a justice for anything done on a warrant, preceded by a summons which has not been attended to, requires to be considerably modified. As at present framed, a case may be supposed, in which a summons should be left at an accused person's house, at a time, or under circumstances, which would render it impossible for the accused party to attend according to the exigency of the summons. If an illegal warrant then issued, however grievous the injury inflicted by its execution, the injured party would be left without any remedy against the justice!

The 3rd section of the bill appears to be unobjectionable: it simply enacts that where a conviction or order shall be made by one justice, and a warrant of distress or commitment shall be granted thereon by another justice, *bonâ fide* and without collusion, no action shall be brought against the justice who granted such warrant, but the action (if any) shall be brought against the justice who made such conviction or order.

The next section provides, that no action shall be brought against the justice who grants a warrant of distress against any person named and rated in a poor rate, by reason of any defect or irregularity in the rate, or by reason of such person not being liable to be rated therein, unless the plaintiff shall have appealed against such rate, and unless, at the time of issuing such warrant such appeal be then pending, or have been tried and such rate quashed. In this case, as in the case of convictions and orders already adverted to, the injured party is to incur the expense of appealing against the rate, before the action can be commenced.

The 5th section declares, that where a discretionary power is given to a justice by any act of parliament, no action shall be brought against him by reason of the manner in which he shall have exercised his discretion—a provision which, if necessary, seems to be reasonable.

The 6th section proposes to introduce a novel branch of practice. It recites, that justices often refrain from the execution of duties relating to their office, doubting whether they may lawfully act, and fearing

actions, and that it would conduce to the advancement of justice, if such justices were enabled and directed to perform their duties without risk. It therefore enacts, that where a justice refuses to do any act for fear of subjecting himself to an action, the party requiring such act to be done may apply to the Queen's Bench upon affidavits, for a rule, calling upon such justice, and also upon the party to be affected by such act, to show cause why such act should not be done, and if good cause shall not be shown, the rule may be made absolute, with or without costs; and the justice, upon being served with the rule, shall obey the same, without being subject to an action for such obedience. The effect of this enactment will be, to relieve justices from all responsibility which they are not willing voluntarily to incur. Every doubtful question will have to be discussed and determined in the Court of Queen's Bench in the first instance, and with the pressure of business which already exists in that court, it is not easy to conceive how the judges will find time to dispose of the additional business thus sought to be thrown upon them.

The 7th section merely provides, that where a warrant of distress or commitment founded on a conviction or order shall be confirmed upon appeal, no action shall be brought against the justice who granted such warrant, by reason of any defect in such conviction or order: and the 8th section enacts, that if an action be brought against the provisions of this act, *a judge of the court*, upon the application of the defendant, and upon an affidavit of facts, may set aside proceedings in the action, with or without costs. Throwing upon a judge at chambers, rather than upon the court, the responsibility of deciding whether a party who considers himself aggrieved has or has not a right of action, is so obviously objectionable, that if this bill should be submitted to the judges, we entertain little doubt the enactment in question will be modified, and, at all events, an appeal given to the court from the decision of the judge.

Sections 10, 11, 12, and 13, contain provisions to be found in many acts of parliament, directing a month's notice of the intended action,—that the venue shall be laid in the county in which the act complained of was committed,—and the defendant be allowed, to plead the general issue and give the special matter in evidence, and to tender amends or pay money into court.

The 14th section is substituted for the provisions of the statute 43 Geo. 3, with some important modifications. We copy it without abridgment:—

“In all cases, where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order, as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence, as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

The 15th section provides for costs, which, in certain specified cases, are to be taxed, either for plaintiff or defendant, as between attorney and client; and the only remaining section of importance is the 18th, which repeals the 7 James 1st, c. 5, the 21 James 1st, c. 12, so much of 24 Geo. 2, c. 44, as relates to actions against justices, and the 43 Geo. 3, c. 141, except so far as they may repeal other statutes.

Anxiously desiring to see the magistracy in every grade upheld and protected in the administration of their duties, we deem it also desirable, that the execution of a trust so grave and important should be attended with a degree of responsibility sufficient to secure the exercise of due caution and consideration on the part of those invested with such extensive powers. The summary above given of the leading provisions of the bill now before parliament, and the accompanying observations, will enable our readers to judge for themselves whether the principle of protection is carried so far, as to engraft unnecessary exceptions on the rule, that there is no wrong without a remedy. When the bill is again submitted to parliament, after having passed through committee, we shall revert to its enactments, and hope to find them amended in such a manner as to entitle the bill to a degree of commendation less qualified than we are now enabled to bestow upon it.

## PROCEEDINGS FOR REPEALING THE CERTIFICATE DUTY.

IN our last week's statement of the measures adopted for bringing before parliament the subject of the repeal of the certificate duty, we reported the proceedings of the Incorporated Law Society and the Manchester Law Association. The Metropolitan and Provincial Law Association are also in the field,—joining the other professional bodies in promoting the general object.

The statement in support of the repeal of the tax, a copy of which appeared in our last number, (p. 424, *ante*,) has been forwarded, 1st, to all the provincial law societies,—2ndly, to all the country members of the Incorporated Society,—3rdly, to all the country members of the Metropolitan and Provincial Law Association,—and 4thly, in the towns where there are no law societies, or members belonging to any law society, (we are sorry to say a considerable number,\*) it has been transmitted to the town clerk, or clerk to the magistrates, other influential solicitor.

Numerous petitions, as our readers are aware, have already been presented for the repeal of the tax, of which a list is subjoined. These are, for the most part, from the smaller towns and from individuals, the signatures amounting to about 1400. To this number we must now add the 1400 members of the Incorporated Law Society represented by the Council under the common seal of the society. Doubtless, when the petitions of Manchester, Liverpool, Birmingham, Leeds, and other large towns and districts, are presented, the numerical force will be more than doubled.

It is proposed, we understand, to convene a general meeting of the whole London profession, in the Hall of the Incorporated Society, at as early a day as may be expedient; and, at all events, to procure the individual signatures of London solicitors, and to put their influence in requisition amongst the members of parliament.

The intended bill for the repeal of the tax, to which we adverted last week, may aptly follow the precedent of 1824, repealing the stamps on law proceedings by the 5 Geo. 4, c. 41. Sir John Copley was then the Attorney-General, and we hope that Sir John Jervis will not be less willing than his distinguished predecessor to do justice to

the larger branch of that profession of which he is the head.

Obviously, however, there must still be an *annual registration* of attorneys. The 6 & 7 Vict. c. 73, (the Attorneys' and Solicitors' Act,) will require some alteration in order to simplify the annual certificate now issued by the Registrar of Attorneys and Solicitors, and render it a complete authority to practise, without either stamping or entering. Besides, therefore, the substantial saving of money, there will be a saving of time and trouble.

One of our contemporaries takes for granted that there is no present chance of success, and talks proudly of buckling on his armour for five years, anticipating a long harvest of profitable exertion. We would make much fewer campaigns in attacking this grievance, and have no apprehension that "*our* occupation will be gone" when that grievance is no more. There are other large fields of periodical exertion:—Such as the taxes upon the administration of justice;—the right of advocacy by attorneys;—removing the restrictions of the Inns of Court;—the encroachments made in regard to government solicitorships;—the exclusion of attorneys from local judgeships and other posts of distinction;—forced and unauthorized references and compromises;—many objectionable points in the practice of retainers;—neglect of attendance after acceptance of briefs;—and other matters equally injurious and inconvenient both to clients and attorneys. Ample scope and room enough may be here found for five years, but we hope to make much shorter work of the poll-tax.

We proceed now to a few points of practical advice in conducting the attack upon the stronghold which has to be carried.

1. We recommend that the petitions should be as speedily as possible sent up to the members representing the several counties, cities, or boroughs where the petitioners respectively reside. This will be preferable to sending them either to the Incorporated Law Society or the Metropolitan and Provincial Law Association, or through any other professional channel in London. By submitting them to the members themselves, attention will be better secured than through any other medium.

2. We would suggest, also, that information be given to the Secretary of the Incorporated Law Society and the Metropolitan and Provincial Law Association, of whatever petitions may be presented, and to whom entrusted.

\* There are no less than 15 English and 10 Welsh counties in which there is no law society.

3. It will be expedient to provide the secretary with letters which may be transmitted to the Members when the principle of the bill is to be brought under consideration, in order to ensure a favourable division when that question comes on.

4. The injustice of the tax should be strongly set forth. "Reasons in support of the repeal" should be submitted to every member. Our representatives, who have so many subjects to consider, are slow to understand the details of any of them. The claim to redress must be made palpable and irresistible.

We have one word to say as to the speed with which measures of this extensive nature are expected to be conducted. A few individuals, junior members of the profession, of a moderate amount of practice, may find time to meet and come to very rapid conclusions; but large bodies of men, whose leaders are much occupied, and scattered over a large space, cannot readily assemble and act with "infinite promptitude." The business of clients cannot be instantly laid aside, and the business of the profession taken up exclusively. We are sure that much pains and labour have been, and will be, bestowed by those who are engaged in the present movement, and we hope they will be cordially assisted both in town and country, and that the result will be as satisfactory as can be rationally expected.

List of places from whence petitions have been presented:—

Abergavenny.  
Aberystwyth.  
Ashburton.  
Ashton-under-Lyne.  
Aixbridge.  
Barnard Castle.  
Barnsley.  
Barton-on-Humber.  
Barnstaple.  
Bawtry.  
Berwick-on-Tweed.  
Bideford.  
Bolton.  
Boston.  
Botesdale.  
Bradford.  
Bridgewater.  
Brighton.  
Burton-on-Trent.  
Chard.  
Colne.  
Crickham.  
Crowle.  
Chichester.  
Cheltenham.  
Dartford.  
Debenham.  
Dudley.

Easingwold.  
Ely.  
Epworth.  
Exeter.  
Gainsborough.  
Gosport.  
Halstead.  
Haverfordwest.  
Hereford.  
Hinton.  
Honiton.  
Horbury and Ossett.  
Huddersfield.  
Kirton-in-Lindsey.  
Kidderminster.  
Kingston-on-Hull.  
Lancaster.  
Leominster.  
Llandilo.  
Lymington.  
Macclesfield.  
Market Drayton.  
Molton, South.  
Monmouth.  
Newcastle-under-Lyne  
Newport.  
Newton Abbott.  
Northallerton.

Norwich.  
Pickering.  
Plymouth.  
Retford, East.  
Ruthin.  
Rye.  
St. Helen's.  
Shaftesbury.  
Sheffield.  
Shrewsbury.  
Somerton & Langport.  
Southwell.  
Stamford.  
Stokesley.  
Stone.  
Sudbury.  
Sutton Coldfield.  
Tenterden.  
Tenbury.

Thirsk.  
Tiverton.  
Torrington.  
Towcester.  
Uttoxeter.  
Wakefield.  
Walsall.  
Wareham.  
Warrington.  
Wellington.  
Wells.  
Whitehaven.  
Wigan.  
Wimborne.  
Weston-on-Sea.  
Wincenton.  
Wolverhampton.  
Wrexham.

List of members who have presented petitions:—

Sir Thomas Ackland.  
Col. Anson.  
Mr. Bailey.  
Mr. Banks.  
Mr. Barkly.  
Mr. Benbow.  
Dr. Bowring.  
Viscount Brackley.  
Mr. Bremridge.  
Sir J. Y. Buller.  
Mr. Cabell.  
Mr. Cobden.  
Mr. Cockburn.  
Mr. Divett.  
Mr. O. Duncombe.  
Mr. Greenall.  
Mr. Greene.  
Mr. Headlam.  
Mr. Heathcote.

Mr. Hodges.  
Sir Alex. Hood.  
Mr. Jackson.  
Mr. Littleton.  
Mr. Locke.  
Mr. Mackinnon.  
Col. Matheson.  
Mr. Miles.  
Mr. Moody.  
Mr. Roundell Palmer.  
Mr. Patten.  
Col. Powell.  
Mr. Campbell Renton.  
Mr. Sanders.  
Mr. K. Seymour.  
Mr. Stanley.  
Mr. Thicknesse.  
Col. Thompson.  
Mr. Ward.

## NOTES ON EQUITY.

### SOLICITORS' LIEN ON BOOKS.

THE lien of solicitors on the deeds, papers, and securities of their clients and on the fund in court or other monies for the costs due to them, has been established by numerous decisions, not only with regard to the charges applicable to such deeds, papers, or monies in particular, but for their charges in general.\*

In a case recently reported,<sup>b</sup> the solicitors claimed a lien on the copies of a very expensive work which had been delivered to them for the purpose of being produced to the witnesses on a trial, for the supply of paper for the work, and payment for which had been refused, on the ground that it of was a very inferior quality.

\* *Mitchell v. Oldfield*, 4 T. R. 123; *Hollis v. Claridge*, 4 Taunt. 807; *Stevenson v. Blacklock*, 1 M. & S. 535; *Ex parte Moule*, 5 Mad. 462; *Worral Johnson*, 2 J. & W. 218.

<sup>b</sup> *Friswell v. King*, 15 Sim. 191.

The lien was claimed for the costs of defending the action.

It was contended, in opposing the application, that the lien did not extend to articles, such as books, as in the present case, or models or machines, delivered to solicitors for the purpose of being exhibited to witnesses or a jury.

The *Vice-Chancellor* said, that the books tended to manifest the defendant's right to defeat the plaintiff in the action, and therefore he could not but think that the solicitors had a lien upon them.

## BANKRUPTCY AND INSOLVENCY LAW AMENDMENT.

THE Committee appointed by the Association of Merchants, Bankers, and Traders in the Metropolis, have recently sent forth the following statement of the grievances of which they complain, and the remedies they propose. We copy the document without any material abridgment, reserving the observations its perusal suggests for a future number :—

"The mercantile and trading classes complain that under the present law—

"They have no prompt and effectual means of recovering payment of their debts :

"That no efficient punishment is ensured to the fraudulent and dishonest debtor ;

"That the Court of Bankruptcy does not afford the facilities which it is desirable it should do, for the administration of the estates of insolvents therein ;

"That to these defects may be attributed the destruction of the fair profits of the legitimate trader.

"The Metropolitan Committee submit the following summary of the alterations they propose for remedying these evils, and for improving the Law of Bankruptcy and Insolvency ; and in so doing, they are desirous it should be understood that their object is not to punish all debtors indiscriminately, but rather, by ensuring the punishment of the reckless and fraudulent trader, to place in relief the conduct of those who may apply to the court under the pressure of misfortune to assist them in a fair distribution of their property amongst their creditors. To accomplish this, the committee desire to make the administration of the Bankrupt Laws so efficient that they may be universally resorted to, as well for the benefit of the debtor as for that of the creditor. With this view it is proposed—

"Firstly.—To restore the law of arrest for debt upon mesne process, with ample precautions against the abuses which prevailed under the old law.

"For this purpose, the committee adopt the provisions of a bill brought into the House of Commons by Mr. Warburton, in 1846,

under which the arrest would be effected only by the order of a Commissioner of the Court of Bankruptcy, to be obtained upon satisfactory proof of the existence of a *bond fide* debt of 20*l.* or upwards, and of payment having been twice demanded within a limited period previously to the application for leave to arrest.

"Immediately upon arrest, the debtor would be brought before the Commissioner, who would be empowered, after examination of the parties, to discharge the debtor from custody, either unconditionally, or upon payment of a sum of money into court, or upon his finding bail to such amount as the commissioner might direct. He would also be entitled to his release upon his signing (if he should be liable to the Bankrupt Laws) a declaration of insolvency, or petitioning the Court of Insolvent Debtors for relief.

"Secondly.—The committee recommend the following measures for securing punishment to the fraudulent and dishonest debtor :—

"To give to the commissioners absolute discretion at any time to refuse or withdraw the protection which every bankrupt now obtains as a matter of course immediately upon his surrendering under the fiat.

"To render the refusal or withdrawal of protection *compulsory* upon the court when the bankrupt shall fail to show that his bankruptcy has arisen otherwise than from fraud, gambling, wilful misconduct, or extravagance ; or in case of concealment, or making away with his property or books, contracting debts without reasonable expectation of ability to pay them, and for other offences which are now by the present Bankrupt Law punishable as felonies or misdemeanours.

"To give to the creditors who have proved their debts, and to the assignees for the whole amount of debts admitted to be due by the bankrupt, the power of judgment creditors to take the person of the bankrupt in execution *when thus deprived of protection* : and, in case of such execution, the bankrupt shall not be entitled to his release for a period not exceeding *three years* (the maximum period of remand possessed by the Insolvent Debtors' Court,) except by order of the commissioner who withdrew the protection.

"As an inducement to creditors to undertake, when circumstances require it, the criminal prosecution of fraudulent bankrupts, the committee propose to throw the expense of criminal proceedings on the country, instead of on the estate. It is manifestly unjust that creditors, already injured by the loss of their property, should be called upon to pay the expenses—generally heavy, of a criminal prosecution, especially as in such cases there is little or no dividend for them. The practical operation of the present system is, that indictments are scarcely ever resorted to, and that the rogue escapes the punishment he deserves.

"Thirdly.—In order to make the present proceedings upon the summons of a debtor before the Court of Bankruptcy more effective, and to give greater protection to the property

of the debtor for the benefit of the creditors, it is proposed to simplify the notice and affidavit preliminary to obtaining the summons; to facilitate the service of both the notice and summons, and to require upon the debtor's appearance thereupon, additional evidence of having a good defence to the claim *beyond his own affidavit*. It is also proposed to require security by bond, with sureties, for the protection of his property during the 14 days' interval allowed between the appearance upon the summons and the act of bankruptcy, and in default of such security, or upon the non-appearance of the debtor on the summons, to empower a person to be named by the court to take charge of his property as the court should direct, until he can be made bankrupt.

"Fourthly.—It is the desire of the committee to facilitate as much as possible the administration of the estates of insolvents in the Court of Bankruptcy, and for this purpose to remove all unnecessary sources of expense, trouble, and delay. They desire to abolish the fiat, and to give to the Court of Bankruptcy original jurisdiction to declare a party bankrupt upon proof of the present requisites, viz., the petitioning creditor's debt, and the trading, and act of bankruptcy by the debtor.

"The committee see *no advantage whatever* in the present fiat, while it entails upon the creditors delay, trouble, and expense.

"It is proposed that the heavy payments made to the court should altogether cease. 40% are now paid in every bankruptcy, besides smaller amounts, which are applied in discharging the salaries of the commissioners and officers of the court, compensations to those who have retired, and for the support of the building. It is thought that the maintenance of this branch of judicature ought to be borne by the State out of the Consolidated Fund, in the same manner as that of the courts of law and equity. [qy.] and the Insolvent Debtors' Court. The large sums already accumulated for this court, under the denomination of "the Secretary of Bankrupts' Fund," and the "Secretary of Bankrupts' Compensation Fund," might be transferred to the State.

"In order still further to reduce the expenses which press most heavily on the business of this court, particularly upon the small estates, it is proposed to alter the mode of remuneration now made to the official assignees. At present they receive a per centage upon the gross sums collected, and an additional per centage upon the amount divided,—the rate being in each case at the discretion of the commissioner.

"The committee are desirous of paying these officers by a liberal commission *upon the amount divided alone*, and that by a scale to be determined by parliament.

"For the purpose of improving the system of getting up the bankrupts' balance sheets, which in a very large class of cases are concocted with the intention of concealing fraud and misleading the creditor, it is proposed that it should be the duty of the official assignee, who must have possession of the bankrupt's

books, to prepare, with the assistance of the bankrupt, this important document. The balance sheet would then be based upon the bankrupt's accounts, and the creditors could rely upon having a trustworthy statement, the preparation of which by the official assignee would ensure their having accurate knowledge of the bankrupt's transactions.

"The committee are anxious also that the creditors' assignees should have the right of selecting the official assignee to act under each bankruptcy (the commissioner, upon the adjudication, first appointing one provisionally,) a step which they consider would tend to the appointment of the most efficient persons for this important office.

"In bankruptcies constituted by the debtor himself, it would operate as a check upon fraud were the court to have authority to nominate the solicitor, instead of his being chosen by the bankrupt; clauses to this effect have been drawn by the committee.

"The public are fully aware of the inconvenience and loss of time experienced by creditors in consequence of the number of meetings held by the commissioners on the same day. It is much to be desired that a greater number of days in the week were devoted to the public business, and consequently more time allowed for the sitting in each case. It is proposed to remedy this evil by the periods of the sittings of the commissioners being defined by the act.

"Fifthly.—With a view to afford further information upon the affairs of bankruptcy, full and ample annual returns are to be called for of the proceedings and results of each bankruptcy, showing, among other things, the amount of debts and liabilities, and the assets collected and divided in each case.

"Sixthly.—Under the existing law the pay, half-pay, and pensions of bankrupts are not available to the creditors: this is intended to be remedied by giving the Court of Bankruptcy the same power to order periodical payments thereof to the creditors, as the Insolvent Debtors' Court now has.

"Seventhly.—Considerable difficulty and loss is often experienced by creditors upon the deaths of traders, when no executor or administrator is appointed: the committee propose to deal with this class of cases by empowering the Court of Bankruptcy, after due notice given, to place a party in possession of the property, and if no legal personal representative should be nominated within 12 months, then that the official assignee should obtain administration, and proceed to distribute the effects as under a bankruptcy.

"Eighthly.—The committee have considered the subject of compositions, and other modes of arrangement between debtors and their creditors, and are of opinion that it would be attended with considerable benefit if they were effected with the sanction of the Court of Bankruptcy, and the concurrence of three-fourths in number and value of the creditors be made binding upon the remainder. It is not desired that public advertisement in the "Gazette"



and newspapers should be made of these arrangements; but as it would be very advantageous that the commercial world should have the means of ascertaining the existence of all transactions of this nature, the committee propose that a registration should be made of all deeds of this description between the debtor and creditor, which should comprise full particulars of the arrangements entered into. A registration also of all bills of sale and mortgages to creditors is provided for, which it is hoped will, to a great extent, check the practice, now so often resorted to by dishonest debtors, of secretly making over their effects to friends for their own benefit and to the injury of their creditors. Clauses to give effect to these views have been prepared.

"The above amendments have been engrafted upon the Bill for the Amendment and Consolidation of the Bankrupt Laws, which was presented to the House of Lords by the Lord Chancellor in the last session of parliament, and which contains some of the provisions suggested by the committee.

"The committee feel convinced that the measures which they have thus recommended, by affording additional and effectual remedies to the creditor for the recovery of his just debts, by holding out more certain punishment to the fraudulent and wilfully improvident debtor, and by giving increased efficiency and utility to the Court of Bankruptcy would, without operating harshly and oppressively upon the honest but unfortunate debtor, bring about that sound and wholesome system of commercial dealing, the want of which has been so long experienced.

## FEES IN COURTS OF LAW AND EQUITY AND CHANCERY COMPENSATIONS.

### DEBATE IN THE HOUSE OF COMMONS.

*Tuesday, March 2, 1848.*

Mr. Romilly moved to discharge an order, referring to the committee on fees in courts of law and equity, all petitions presented to the house praying for inquiry into the fees imposed upon suitors in Chancery, in pursuance of the powers contained in 5 & 6 Vict. c. 103. The object of the committee as appointed was to inquire into the fees now payable in the Court of Chancery, and to recommend the most desirable reforms; but not to meddle with the compensations that had been awarded to the six clerks. Subsequently a motion had been agreed to, *sub silentio*, extending the committee's inquiry to the latter object, of which he disapproved, the compensations in question being subject to the inquiry of the Lord Chancellor; and therefore he brought forward the present motion, with the view to reverse a decision which had been obtained from the house unawares. He thought the compensation decidedly too large; although the act under which they were granted had been a very great benefit to the suitors, still that benefit had been purchased too dear. An inquiry might be necessary, but it ought to be a separate inquiry, and not mixed up with the objects of the existing committee.

Mr. Aglionby opposed the motion. It was on his proposal that the committee's inquiries had been extended, as stated. He had given notice of his motion to that effect, and when brought forward it was agreed to without opposition. The petitions which had been in consequence referred to the committee embraced two subjects:—the amount of fees and their appropriation. The first point clearly came within the scope of this committee, and he should never rest until he obtained an inquiry into that gross business, the appropriation of the fees. In this inquiry no one was more interested than the learned judges who fixed the compensations.

Sir G. Grey said, the committee had been granted on the express understanding that the compensations should not be made a part of its inquiry. Afterwards that object had been added, he believed, inadvertently; and it would be most inconvenient if the order for referring the petitions alluded to should not be discharged. Afterwards, the hon. member might either move a separate committee on these petitions, or bring forward a motion in reference to the whole subject of the compensations.

Mr. Hume hoped that a new reference would be made to the committee, embracing the whole inquiry; and on this ground he would not oppose the discharge of the order.

Mr. Ewart also acquiesced in the course suggested by the right hon. the Secretary for the Home Department.

Mr. J. Stuart said, he understood that great benefit was likely to be derived from the more limited inquiry of the committee: he was therefore opposed to mixing up with it other matters.

Mr. Baines said, that neither the profession nor the public would be satisfied without the fullest inquiry. He hoped the hon. member for Cocker mouth would not allow a day to pass without putting a motion on the notice-book for a committee to inquire into the matter fully. The grievance was one which pressed on every one who had the misfortune to get into Chancery; and the feeling of the profession was universally against it. The gentlemen who had obtained this compensation ought themselves to demand the inquiry. For several years before 1842, it was said they had concealed the amount they received, lest the Chancellor should fix their allowances lower. The fact of itself called for inquiry.

The motion was then agreed to.

## ADMINISTRATION OF OATHS IN CHANCERY BILL.

THIS is a bill to empower certain Officers of the High Court of Chancery to administer Oaths and take Declarations and Affirmations.

It recites, that by the 5 & 6 Vict. c. 103, the clerks of enrolments in chancery and the clerks of records and writs were empowered to administer oaths and take affirmations and attestations of honour: and that it is expedient that the clerk of enrolments in chancery and clerks of records and writs should be empowered to take such declarations as herein-after mentioned: And that by the 10 & 11 Vict. c. 97, it

was amongst other things enacted, that certain duties theretofore done and performed by the masters in ordinary in the public office should thereafter be done and performed by the clerk of affidavits and the assistant clerks of affidavits in manner directed by the said act, and a second assistant clerk of affidavits was appointed under the said act :

That, is it expedient that the clerk of affidavits and assistant clerks of affidavits respectively, shall be empowered to administer such oaths, and take such declarations and affirmations, and attestations upon honour, as herein-after mentioned :

It is therefore proposed to enact,

1. That it shall be lawful for every clerk of enrolments in chancery and clerk of records and writs to take any declaration required for the purpose of enrolling any deed or other document in chancery.

2. That it shall be lawful for every clerk of affidavits and assistant clerk of affidavits of the high court of Chancery to administer all such oaths, and take all such declarations, affirmations, and attestations upon honour, as can now be administered or taken, or at any time hereafter may by any act of parliament be directed to be administered or taken, by or before a master in ordinary of the said court.

3. Persons swearing or declaring before such officers to be subject to such penalties for perjury.

4. That as often as the second assistant clerk of affidavits or any of his successors shall die or resign or be removed from his office, the Lord Chancellor shall have power to appoint a second assistant clerk of affidavits in the room of such one who shall so die, resign, or be removed.

[This bill will afford a favourable opportunity for introducing a clause to enable attorneys and solicitors in London to administer oaths as masters *extra*, and thus facilitate equity business. The convenience to persons having to make affidavits will thus be promoted. Men of business will then be able to swear their affidavits at any time near their own homes, instead of coming to Southampton Buildings, within limited and often inconvenient hours.]

#### MEETING AT LYON'S INN HALL.— CERTIFICATE DUTY.

MR. EDITOR,—I have perused with much satisfaction your article of last week, reprobating the numerous attacks of a contemporary law periodical on the Incorporated Law Society, —attacks which, I observe, have been subsequently reiterated. I have also read the letter from a town member of the society, in which I entirely concur, echoing, as it does, the opinions of the London profession. There are, however, some further points to be considered, which, perhaps, do not so much affect the junior as the senior grade of the profession, but which, nevertheless, demand your serious attention.

The most prominent objection appears to be, that the editor of the paper alluded to has retained himself as standing counsel *In re Cer-*

*tificate Duty* for the country attorneys—an unheard-of practice in the history of retainers! Whether the bar-mess, so nice on circuit, will take cognizance of his ambiguous introduction to the notice of the practitioners, remains to be seen.

Is it not extraordinary that a member of the higher branch of the profession should convene and conduct a meeting of attorneys, and lecture them on the certificate duty? Are they so incapable of judging of their own grievances, and so feeble and powerless in stating them, that they need the aid of a learned counsel to call them together and point out the means of redressing their wrongs? If this advocacy were heard within the walls of parliament from the fifty gentlemen of the long robe who sit therein, it might do some good, but an exhortation addressed only to a very small body of the sufferers, congregated in Lyon's Inn, seems *vox et præterea nihil*.

The learned editor, however, claims the merit of having been the legal poker that has at length stirred up the fire of the profession against the impost;—of having been the first who taught the profession that they did not like the tax,—that they should endeavour to obtain its repeal,—that they should sign petitions,—and that—last and *not least*—the whole machinery of his office, publisher and boy included, should be placed at the disposal of the agitators! “The force of *patronage* can no further go.” INTUTA QUÆ INDECORA.

#### TAXES ON THE ADMINISTRATION OF JUSTICE.

The following account is extracted from the annual return of the Accountant-General of the Court of Chancery, from the 25th November, 1846, to the 24th November, 1847.

|  |          |    |    |
|--|----------|----|----|
| Fees received in the Masters' Office . . . . .   | £        | s. | d. |
|  | 36,265   | 16 | 3  |
| Fees received in the Reg. Office . . . . .   | 18,044   | 2  | 0  |
| Fees received in the Report Offices . . . . .  | 5,318    | 11 | 1  |
| Fees received in the Affidavit Office . . . . .  | 4,766    | 13 | 8  |
| Fees received in the Examiners' Office . . . . .   | 1,615    | 7  | 3  |
| Fees received for Fines and Recoveries . . . . .   | 377      | 18 | 6  |
| Fees received at the Subpoena Office . . . . .   | 134      | 8  | 0  |
| Fees formerly payable to the Lord Chancellor . . . . .   | 1,900    | 13 | 2  |
| Fees received by the Lord Chancellor's Secretary, and paid into the Fund by order of the Lord Chancellor . . . . . | 2,655    | 8  | 6  |
| Fees received by Sec. of Lunatics . . . . .  | 3,288    | 16 | 8  |
| Fees received by Clerk to Masters in Lunacy . . . . .  | 3,510    | 0  | 5  |
| Fees received by Taxing Masters . . . . .  | 29,143   | 15 | 11 |
| Fees received by Clerk of Enrol. . . . .   | 7,109    | 2  | 4  |
| Fees received by Records and Writ Clerks . . . . .   | 23,163   | 3  | 10 |
|  | £137,293 | 17 | 7  |

## LIST OF SHERIFFS, UNDER-SHERIFFS,

COMPILED BY

WARRANTS are granted in Town for Breconshire, the Borough of Carmarthen, shire, Durham, Gloucestershire, Gloucester City, Herefordshire, Kingston-upon-Hull, Lan- the Welsh Counties, not before named.

Office Hours, in Term, from 11 till 4 ;

## ENGLAND.

| <i>Counties, &amp;c.</i> | <i>Sheriffs.</i>  |    |    |    |
|--------------------------|---|----|----|----|
| Bedfordshire . . .       | Thomas Abbott Green, of Pavenham, Bury, Esq.                                      | .. | .. | .. |
| Berkshire . . .          | John Hopkins, of Tidmarsh House, Berks, Esq.                                      | .. | .. | .. |
| Berwick-upon-Tweed .     | George Kerr Nicholson, of Berwick-upon-Tweed, Esq.                                | .. | .. | .. |
| Bristol, City of . .     | Edward Sampson, jun. of Bristol, Esq.   | .. | .. | .. |
| Buckinghamshire . .      | William Lowndes, of the Bury, Chesham, Bucks, Esq.                                | .. | .. | .. |
| Cambridge and Hunts .    | John Moyer Heathcote, of Connington Castle, Esq.                                  | .. | .. | .. |
| Canterbury, City of .    | Robert George Chipperfield, of Canterbury, Esq.                                   | .. | .. | .. |
| Cheshire . . .           | Henry Brooke, of Grange, Cheshire, Esq.   | .. | .. | .. |
| Chester, City of . .     | John Trevor, of Chester, Esq.   | .. | .. | .. |
| Cinque Ports . . .       | His Grace the Duke of Wellington  | .. | .. | .. |
| Cornwall . . .           | Augustus Coryton, of Pentillie Castle, Esq.                                       | .. | .. | .. |
| Coventry, City of . .    | Act 5 & 6 Vict. c. 110, s. 10, abolished the Office of Sheriff for this City, and |    |    |    |
| Cumberland . . .         | Henry Dundas Maclean, of Lazonby, Esq.  | .. | .. | .. |
| Derbyshire . . .         | Sir Robert Burdett, of Foremark, Baronet  | .. | .. | .. |
| Devonshire . . .         | John Sillifant, of Combe, near Crediton, Esq.                                     | .. | .. | .. |
| Dorsetshire . . .        | John Goodden, of Overcompton, Dorsetshire, Esq.                                   | .. | .. | .. |
| Durham . . .             | Sir William Eden, of Windlestone-hall, Bart.                                      | .. | .. | .. |
| Essex . . .              | Beale Blackwell Colvin, of Monkham-park, Waltham Abbey, Essex                     | .. |    |    |
| Exeter, City of . .      | John Follett, of Exeter, Esq.   | .. | .. | .. |
| Gloucestershire . .      | William Capel, of The Grove, Painswick, Esq.                                      | .. | .. | .. |
| Gloucester, City of .    | George Jones, of Gloucester, Esq.   | .. | .. | .. |
| Hampshire . . .          | John Wood, of Theddon Grange, Alton, Esq.   | .. | .. | .. |
| Herefordshire . . .      | Robert Maulkin Lingwood, of Lyston, near Hereford, Esq.                           | .. | .. | .. |
| Hertfordshire . . .      | William Parker, of Ware-park, Ware, Esq.  | .. | .. | .. |
| Huntingdon & Cambridge   | John Moyer Heathcote, of Connington Castle, Esq.                                  | .. | .. | .. |
| Kent . . .               | John Ashley Warre, of The Cliffe, Ramsgate, Esq.                                  | .. | .. | .. |
| Kingston-upon-Hull .     | John Malam, of Elm Tree House, Hull, Esq.   | .. | .. | .. |
| Lancashire . . .         | Sir Thomas George Hesketh, of Rufford-hall, Lancaster                             | .. | .. | .. |
| Leicestershire . . .     | Henry Freeman Coleman, of Evington-hall, Esq.                                     | .. | .. | .. |
| Lincolnshire . . .       | Richard Ellison, of Sudbrooke Holme, Esq.   | .. | .. | .. |
| Lincoln, City of . .     | Thomas John Nathaniel Hogden, of Lincoln, Esq.                                    | .. | .. | .. |
| Lichfield, City of .     | William Parker, of Lichfield, Esq.  | .. | .. | .. |
| London, City of . .      | { William Cubitt, of Bedford-hill, Balham, Esq.                                   | .. | .. | .. |
| Middlesex . . .          | { Charles Hill, Esq.  | .. | .. | .. |
| Monmouthshire . .        | Edward Harris Phillips, of Trossant-cottage, Esq.                                 | .. | .. | .. |
| Newcastle-upon-Tyne .    | James Dent Weatherley, of Newcastle-upon-Tyne, Esq.                               | .. | .. | .. |

**DEPUTIES, AND AGENTS, FOR 1848.**

**MR. LEONARD LAIDMAN.**

Cardiganshire, Radnorshire, and all places except Canterbury, Cinque Ports, Chester, Derbyshire, Lichfield City, Monmouthshire, Poole, Southampton, Worcester City, York City, and  
and in Vacation, from 11 till 3.

**ENGLAND.**

*Under-Sheriffs.*

Theed Pearse, jun., of Bedford, Esq. ..  
John Jackson Blandy, of Reading, Berks ..  
Robert Woddell, of Berwick-upon-Tweed, Esq. ..  
William Ody Hare, 3, Small-street, Bristol, Esq. ..  
Acton Tindal, of Aylesbury, Esq. ..  
George Game Day, of St. Ives, Esq. ..  
William Sladden, of Canterbury, Esq. ..  
Messrs. Hostage and Blake, Northwich, (A. U. J. Hostage, Chester, Esq.) ..  
John Hostage, of Chester, Esq. ..  
Thomas Pain, of Dover, Esq. ..  
Peter Glubb, of Liskeard, Esq. ..  
Warrants are now granted ..  
John Nanson, of 9, Castle-street, Carlisle, Esq. ..  
Messrs. Simpson, Frear and Simpson, of Derby ..  
Mark Kennaway, of Exeter, Esq. ..  
John Young Melmoth, of Sherborne, Esq. ..  
William Emerson Wooler, of Durham, Esq. ..  
Joseph Jessoph, of Waltham Abbey, Esq. ..  
Edmund William Paul, of Exeter, Esq. ..  
John Burrup, of Berkeley-st., Gloucester, Esq. ..  
Anthony Gilbert Jones, of Gloucester, Esq. ..  
Charles Sengrim, of Winchester, Esq. ..  
Francis Lewis Bodenham, of Hereford, Esq. ..  
Messrs. Longmore and Swarder, of Hertford, ..  
George Game Day, of St. Ives, Esq. ..  
Messrs Palmer, France and Palmer, 24, Bedford-row, London ..  
George Lawrence Shackles, of Hull, Esq. ..  
John William Richard Wilson, of Preston, Esq. ..  
Messrs. R. and G. Toller, of Leicester, Esq. ..  
Godfrey Tallents of Newark, Esq. (A. U. Richard Carline of Lincoln, Esq., and H. Williams, of Lincoln, Esq.) ..  
Richard Mason, of Lincoln, Esq. ..  
Charles Gresley, of The Close, Lichfield, Esq. ..  
{ David Williams Wire, St. Swithin's-lane, Esq. ..  
Thomas France, 24, Bedford-row ..  
C. B. Fox, Newport, Esq., (A. U. Messrs. Prothero, Towgood, and Fox, Newport) ..  
William Lockey Harle, of Newcastle-upon-Tyne, Esq. ..

*Deputies and Town Agents.*

Messrs. Maples, Pearse, Stevens, and Maples, Frederick-place, Old Jewry.  
Messrs. Gregory, Faulkner, Gregory and Skirrow, 1, Bedford-row.  
John Stevenson, 3, King's-road, Bedford-row.  
Messrs. Bridges, Mason and Bridges, Princes Street, Red Lion square.  
Messrs. Baxter, 48, Lincoln's-inn-fields.  
Messrs. Parker, Taylor, Rooke and Parker, 3, Raymond-buildings, Gray's Inn.  
Messrs. Rickards and Walker, 29, Lincoln's-inn-fields.  
John Froggatt, Clifford's-inn.  
Messrs. Chester, Toulmin and Chester, 11, Staple-inn.  
Messrs. Wright and Kingsford, 23, Essex-street, Strand.  
Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.  
By the Sheriff of WARWICKSHIRE.  
Messrs. Plucknett and Adams, 17, Lincoln's-inn-fields.  
William Grimwood Taylor, 14, John-street, Bedford-row.  
Messrs. Finch, Dobinson and Geare, 57, Lincoln's-inn-fields.  
Messrs. Warry and Robins, 7, New-inn.  
Henry Morgan Vane, Carlton-chambers, 12, Regent-street.  
Messrs. Nelson and Wynn, 2, Gresham-place, Lombard-street.  
Messrs. Beavor and Buckley, 2, Gray's Inn-square.  
Messrs. Jones, Trinder, Tudway and Eyre, 1, John-street, Bedford-row.  
Messrs. Goodman and Watts, 8, Coleman-street, City.  
William Braikenridge, 16, Bartlett's-buildings, Holborn.  
Messrs. Overton and Hughes, 25, Old Jewry.  
Messrs. Hawkins, Bloxam, Stocker and Bloxam, 2, New Boswell-court.  
Messrs. Parker, Taylor, Rooke and Parker, 3, Raymond-buildings, Gray's-inn.  
Messrs. Palmer, France and Palmer, 24, Bedford-row.  
Messrs. Westmacott and Co. 28, John-street, Bedford-row.  
Messrs. Wigglesworth, Ridsdale and Craddock, 5, Gray's Inn-square.  
Thomas Toller, 6, Gray's-inn-square.  
Messrs. Austen and Jobson, 4, Raymond-buildings, Gray's Inn.  
Messrs. Taylor & Collison, 22, Great James-street, Bedford-row.  
Messrs. Maples, Pearse, Stevens and Maples, Frederick's-place, Old Jury.  
Secondaries' Office, 5, Basinghall-street.  
Messrs. James and William Burchell, 24, Red Lion-square.  
George Hall, 11, New Boswell-court.  
Messrs. Chisholme, Hall and Gibson, Lincoln's-inn-fields.

|                        |   |    |    |    |    |    |
|------------------------|---|----|----|----|----|----|
| Norfolk . . . .        | Wyrley Birch, of Wresham, Esq. . . . .  | .. | .. | .. | .. | .. |
| Norwich, City of . .   | James Watson, of Castle Ditches, Norwich, Esq. . . . .  | .. | .. | .. | .. | .. |
| Northamptonshire . .   | The Hon. Henry Eley Hutchinson, of Lois Weedon, near Towcester . . . . .                      | .. | .. | .. | .. | .. |
| Northumberland . .     | George Burdon, of Heddou House, Northumberland, Esq. . . . .                                  | .. | .. | .. | .. | .. |
| Nottinghamshire . .    | Robert Holden, of Nuttall Temple, Esq. . . . .  | .. | .. | .. | .. | .. |
| Nottingham, Town of .  | James Roe, of Nottingham, Esq. . . . .  | .. | .. | .. | .. | .. |
| Oxfordshire . . . .    | Mathew Piers Watt Boulton, of Great Tew, Oxon, Esq. . . . .                                   | .. | .. | .. | .. | .. |
| Poole, Town of . . .   | Fabian Street, of the Parade, Poole, Esq. . . . .   | .. | .. | .. | .. | .. |
| Rutlandshire . . . .   | The Hon. Charles George Noel, commonly called Lord Viscount Campden, Flitteris-park . . . . . | .. | .. | .. | .. | .. |
| Shropshire . . . . .   | W. H. F. Plowden, of Plowden, Shropshire, and Leamington, Warwickshire, Esq. . . . .          | .. | .. | .. | .. | .. |
| Somersetshire . . . .  | Edward Ayshford Sanford, of Nynehead-court, near Wellington, Esq. . . . .                     | .. | .. | .. | .. | .. |
| Southampton, Town of   | Joseph Lankester, of Southampton, Esq. . . . .  | .. | .. | .. | .. | .. |
| Staffordshire . . . .  | The Hon. Frederick Gough, of Perry, Barr-hall . . . . .                                       | .. | .. | .. | .. | .. |
| Suffolk . . . . .      | The Right Hon. C. Andrew Lord Hentington, Havenham, near Halesworth, Esq. . . . .             | .. | .. | .. | .. | .. |
| Surrey . . . . .       | Lee Steere, of Jayes, Dorking, Esq. . . . .   | .. | .. | .. | .. | .. |
| Sussex . . . . .       | Sir Sotherton Branthwayt Peckham Micklethwait, of Iridge, Sussex, Bart. . . . .               | .. | .. | .. | .. | .. |
| Warwickshire . . . .   | Thomas Dilke, of Maxstoke Castle, Coleshill, Esq., Captain, R. N. . . . .                     | .. | .. | .. | .. | .. |
| Westmoreland . . . .   | The Right Hon. the Earl of Thanet . . . . .   | .. | .. | .. | .. | .. |
| Wiltshire . . . . .    | John Henry Campbell Wyndham, of the College, Salisbury, Esq. . . . .                          | .. | .. | .. | .. | .. |
| Worcestershire . . . . | Joseph Frederick Ledsam, of North-field-house, Esq. . . . .                                   | .. | .. | .. | .. | .. |
| Worcester, City of . . | Richard Padmore, of Worcester, Esq. . . . .   | .. | .. | .. | .. | .. |
| Yorkshire . . . . .    | Yarburgh Greame, of Sowerby-house, Bridlington, Esq. . . . .                                  | .. | .. | .. | .. | .. |
| York, City of . . . .  | Benjamin Dodsworth, of Burton Grange, near York, Esq. . . . .                                 | .. | .. | .. | .. | .. |

## NORTH WALES.

|                      |  |    |    |    |    |    |
|----------------------|--|----|----|----|----|----|
| Anglesey . . . . .   | Sir Harry Dent Goring, of Trysglwyn, Anglesey and Highden, Sussex, Bart. . . . . | .. | .. | .. | .. | .. |
| Carnarvonshire . . . | George Augustus Huddart, of Brynkir, near Tiernadoc, Esq. . . . .                | .. | .. | .. | .. | .. |
| Denbighshire . . . . | Simon Yorke, of Erthig, near Wrexham, Esq. . . . .                               | .. | .. | .. | .. | .. |
| Flintshire . . . . . | Sir William Henry Clerke, of Mertyn, Bart. . . . .                               | .. | .. | .. | .. | .. |
| Merionethshire . . . | Hugh Jones, of Woodland Cottage, near Ruthin, Denbigh, Esq. . . . .              | .. | .. | .. | .. | .. |
| Montgomeryshire . .  | William Lutener, of Dolerw, Esq. . . . .   | .. | .. | .. | .. | .. |

## SOUTH WALES.

|                        |   |    |    |    |    |    |
|------------------------|---|----|----|----|----|----|
| Breconshire . . . . .  | Penry Williams, of Penpont, Esq. . . . .                      | .. | .. | .. | .. | .. |
| Cardiganshire . . . .  | James Bowen, of Twedynaur, near Newcastle Emlyn, Esq. . . . . | .. | .. | .. | .. | .. |
| Carmarthen, Borough of | James Needle, of Queen-street, Carmarthen, Esq. . . . .       | .. | .. | .. | .. | .. |
| Carmarthenshire . . .  | Sir James Williams, of Edwinstford, Bart. . . . .             | .. | .. | .. | .. | .. |
| Glamorganshire . . .   | Thomas William Booker, of Velindra, Esq. . . . .              | .. | .. | .. | .. | .. |
| Haverfordwest, Town of | John Green, of Bridge-street, Haverfordwest, Esq. . . . .     | .. | .. | .. | .. | .. |
| Pembrokeshire . . . .  | Owen Owen, of Cwmgloyne, Esq. . . . .                         | .. | .. | .. | .. | .. |
| Radnorshire . . . . .  | Will not act, is in Rome . . . . .                            | .. | .. | .. | .. | .. |

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

*Queen's Bench.*

(Before the Four Judges.)

*The Queen v. William Belton.* Hilary Term  
1848.ORDER OF SESSIONS.—RIGHT OF APPEAL  
UNDER THE 9 GEO. 4, c. 61, s. 27.

*The statute 9 Geo. 4, c. 61, s. 27, gives to any person aggrieved a right of appeal to "the next general or quarter sessions of the peace holden for the county or place, &c., unless such session shall be holden within twelve days next after such act shall have*

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| H. W. Birch, 1, Lincoln's-inn-fields, Esq. (A. U. Messrs. Adam Taylor and Sons, Norwich) ..      | Messrs. Rooper and Birch, 69, Lincoln's-inn-fields.                          |
| George Jay, of Norwich, Esq. ..  | George Jay, 27, Bucklersbury.  |
| Henry Philip Markham, of Northampton, Esq. ..  | Richard Cooke Yarborough, 44, Lincoln's-inn-fields.                          |
| William Chater, of Newcastle-upon-Tyne, Esq. ..  | Messrs. Bell, Brodrick and Bell, Bow Church-yard.                            |
| George Hodgkinson, of Newark, Esq. (A. U. J. Brewster, of Nottingham, Esq.) ..                   | Messrs. Taylor and Colliason, 28, Great James-street, Bedford-row.           |
| Christopher Swan, of Nottingham, Esq. ..   | Messrs. Wolme, Loftus and Young, 10, New-inn.                                |
| Samuel Cooper, of Henley-upon-Thames, Esq. ..  | Charles Berkeley, 52, Lincoln's-inn-fields.                                  |
| Henry Mooring Aldridge, of Poole, Esq. ..  | Messrs. Skilbeck and Hall, 19, Southampton-buildings.                        |
| Not known .. ..  | Not known.   |
| Joshua John Peele, of Shrewsbury, Esq. ..  | Harvey Bowen Jones, 22, Austin-frirs.  |
| John Nicholeuts, of South Petherton, Esq. ..   | Messrs. W. and E. Dyne, 61, Lincoln's-inn-fields.                            |
| James Caldecott Sharp, of Southampton, Esq. ..   | Messrs. Jones, Trinder, Tudway and Eyre, 1, John-street, Bedford-row.        |
| Messrs. Keen and Hand, of Stafford ..  | Messrs. White, Eyre and White, 11, Bedford-row.                              |
| J. Crabtree, Halesworth, Esq. (A. U. Messrs, Wayman, Green and Smithies, of Bury St. Edmunds) .. | Messrs. N. Stevens and Gosling, 1, Gray's-inn-sqr.                           |
| Mark Smallpiece, of Dorking, Esq. ..   | Messrs. Smallpiece, 9, New-square, Lincoln's-inn.                            |
| Messrs. Palmer, France and Palmer, of 24, Bedford-row, London. ..                                | Messrs. Palmer, France and Palmer, 24, Bedford-row.                          |
| John Welchman Whateley, Waterloo-street, Birmingham ..   | Messrs. Maples, Pearse, Stevens and Maples, 6, Frederick's-place, Old Jewry. |
| John Heelis, of Appleby, Esq. ..   | George Mounsey Gray, 9, Staple-inn.  |
| Gabriel Goldney, of Chippenham, Esq. ..  | William Lewis, 6, Raymond-buildings.   |
| John Tymbs, of Worcester, Esq. (A. U. Messrs. Hydes and Tymbs, of Worcester, Esq.) ..            | George Hall, 11, New Boswell-court.  |
| Robert Gillam, of Worcester, Esq. ..   | Messrs. Cardale, Iliffe and Russell, 2, Bedford-row.                         |
| William Gray, of York, Esq. ..   | Messrs. Bell, Brodrick and Bell, Bow-church-yard.                            |
| George Hicks Seymour, of York, Esq. ..   | Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.                        |

## NORTH WALES.

|  |   |
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| R. Prichard, of Llwydiarth, Esq. ..              | Messrs. Gregory, Faulkner, Gregory and Skirrow, Bedford Row.        |
| Messrs. Poole, Powell and Poole, of Carnarvon .. | Messrs. Abbott, Jenkins and Abbott, 8, New-inn, Strand.             |
| John James, of Wrexham, Esq. ..                  | James Molyneux Taylor, 11, Furnival's-inn.                          |
| Arthur Troughton Roberts, of Mold, Esq. ..       | Messrs. Milne, Parry, Milne and Morris, Harcourt-buildings, Temple. |
| Isaac Gilbertson, of Bala, Esq. ..               | Messrs. Holme, Loftus and Young, 10, New-inn.                       |
| Charles Thomas Woosnam, of Newtown, Esq. ..      | Henry Weeks, 12, Cook's-court, Lincoln's-inn.                       |

## SOUTH WALES.

|  |   |
|--|---|
| Messrs. Maybury, Williams and Cobb, of Brecon, Esq. .. | Messrs. Gregory and Son, Clement's-inn.                               |
| Thomas Morgan, of Cardigan, Esq. ..                    | Messrs. Jones, Trinder, Tudway and Eyre, 1, John-street, Bedford-row. |
| George Thomas, jun., of Carmarthen, Esq. ..            | Messrs. Rickards and Walker, 29, Lincoln's-inn-fields.                |
| Daniel Price, of Talby, near Mandillo, Esq. ..         | Messrs. Abbott, Jenkins and Abbott, 8, New-inn.                       |
| Thomas Evans, of Cardiff, Esq. ..                      | Messrs. Gregory and Son, Clement's-inn.                               |
| To whom all Writs must be sent. ..                     | No Agent ever appointed.  |
| John Crymes James, of Haverfordwest, Esq. ..           | Messrs. Church and Langdale, 38, Southampton-buildings.               |
| Not known. .. ..                                       | Not known.  |

*been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards." An appeal against a refusal of justices to grant a license was heard at the sessions specified by the statute, and was dismissed with costs; but in order that the amount of costs might be ascertained the court adjourned the appeal to the following sessions.*

*Held, that the statute had specified the particular sessions at which the appeal should be heard, and that such sessions had no power of adjourning the appeal to the next sessions for the purpose of ascertaining the amount of costs.*

An order of justice was removed into this court by *certiorari*, and it appeared by the affi-

davits on which the *certiorari* was obtained, that on the 9th March, 1845, William Belton, under the 9 Geo. 4, c. 61, applied to the justices present at the general annual licensing meeting for a license to sell exciseable liquors by retail, which was refused. He then applied under the 27th section, and at a general sessions of the peace. Section 27 enacts, "That any person who shall think himself aggrieved by any act of any justice done in or concerning the execution of this act, may appeal against such act to the next general quarter sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such sessions shall be holden within 12 days next after such act shall have been done, and in that case to the next subsequent sessions holden as aforesaid and not afterwards," provided the party shall give security to abide the judgment and pay the costs. In April the appeal came on to be heard, and the judgment below was affirmed with costs; but in order that the costs might be taxed, and the amount ascertained, the court adjourned the case to the following sessions, and the entry made by the clerk of the peace was "License to be refused; adjourned to the next sessions." At the following sessions counsel appeared for the appellant, and contended, that the court had then no power to make any order for costs on the appellant, and that the jurisdiction given by the statute was confined to the previous sessions. The justices then offered to re-hear the case, and, &c., to permit the counsel for the appellant to produce evidence, but this he refused to do, and the present order was made.

"*Middlesex*.—At the general sessions of the peace, &c., holden, &c., on Tuesday the 5th day of May. Whereas W. Belton of, &c., did, at the general quarter sessions of the peace holden, &c., in the month of April last, exhibit his petition and appeal against the refusal of J. W. and others, justices, &c., and whereas W. Belton gave to the said J. W., &c., such justices as aforesaid, due notice of his intention to appeal to the general quarter sessions of the peace to be holden in and for the said county of Middlesex, on Wednesday the 1st day of April, 1846, against such their refusal; and also entered into a recognizance with sureties as required by the said act, at which said quarter sessions the said appeal of the said W. Belton, and the hearing and determination of the matter of such appeal was by the court then adjourned unto the present general sessions of the peace in and for the said county of Middlesex, holden as aforesaid." The order then went on to allege, that after hearing the parties the sessions dismissed the appeal, and adjudged that W. Belton should pay to the justices the sum of 16l. 19s. 2d. by way of costs, that being the sum ascertained to have been incurred by the justices by reason of the appeal. A rule nisi was afterwards obtained to quash this order, on the ground that the sessions in May had no jurisdiction.

Mr. Pashley, in support of the order of sessions. The court of quarter sessions is a continuing court, and when an appeal has been properly lodged at the sessions, there is an inherent right in such court to adjourn it when necessary for the advancement or convenience of justice. *Rex v. The Justices of Wilts.*<sup>a</sup> *Rex v. Kembolton*,<sup>b</sup> and *Keen v. The Queen*.<sup>c</sup> The 9 Geo. 4, c. 61, s. 27, gives the right of appeal to the next subsequent session, but that must be taken subject to the common law right of the sessions to adjourn a case properly brought before them, and not as specifying and limiting the time for hearing and disposing of the appeal. An order for costs must specify the amount, *Selwood v. Mount*; <sup>d</sup> and a taxation of costs after the sessions has been held irregular, *Regina v. Long*.<sup>e</sup>

Mr. Martin, (with whom was Mr. E. Beavan,) contra. The facts are not stated on the order as they really occurred, for the appeal was heard at the April sessions, and judgment was then given that the license should be refused; but in the order it was alleged, that the appeal was adjourned. The order is also bad for defect of jurisdiction appearing on the face of it. Sections 21, 27, and 29 of the 9 Geo. 4. c. 61, distinctly show that the jurisdiction of the sessions was confined to the April sessions. (Stopped by the court.)

Lord Denman, C. J. It appears to me, under this act of parliament, that the power of appeal is confined to the next general or quarter sessions to be holden after the expiration of 12 days next after the act complained of shall have been committed. Giving full effect to the observations of Lord Ellenborough in *Rex v. The Justices of Wilts*, I think that under this particular act the sessions had no power to adjourn the appeal. Section 21, makes provision for adjournment in certain cases. Section 27 gives the right of appeal to a particular session, but nothing is said as to the power of adjournment. Section 29 affords a further illustration of the intention of the legislature, as showing that it contemplates the appeal being finally disposed of at those sessions. It appears to me, therefore, that what the sessions did on the first occasion was final, and that this order cannot be supported.

Mr. Justice Patteson. I form my opinion on the particular words of the act of parliament. I do not wish to express any opinion which may at all interfere with the authority of the cases which have been cited as to the general power of the quarter sessions to adjourn. The 27th section points out the sessions to which the party shall appeal, and enacts "that the court, at such session, shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet." In this case, then, after hearing the appeal and adjudicating

<sup>a</sup> 13 East, 352. <sup>b</sup> 6 Adol. & Ellis, 603.

<sup>c</sup> 3 New Sess. Cas. 25. <sup>d</sup> 1 Q. B. R. 726.

<sup>e</sup> Id. 740.



that the license should not be granted, the justices adjourn the case for the purpose of ascertaining the amount of costs, which I think they had no power to do.

Mr. Justice Coleridge. I am of the same opinion. I do not deny the general power of the quarter sessions to adjourn the hearing of any case. Here the sessions heard the appeal in April, and judgment was in substance then given, but upon a mere matter of form, in order to give time for taxation of costs they adjourn the case. At the following sessions the court had to perform a mere ministerial act, and the parties did not come prepared to go into their case again, which was in fact prejudged. It was illusory then to offer to hear evidence. It appears to me that this case must rest on the words of the 27th sect. which gives the power of appeal. The effect of that section is to limit the time for appealing to the sessions at which this case was originally heard, and where the whole matter ought to have been finally decided.

Mr. Justice Wightman concurred.

Order of sessions quashed.

#### Common Pleas.

*Engstrom v. Brightman.* Hilary Term, 1848.

**SPECIAL CASE.—JURISDICTION OF COURT TO HEAR.—CONSTRUCTION OF 3 & 4 W. 4, c. 42, s. 25.**

*The consent and agreement of the parties to the statement of a special case under the 3 & 4 W. 4, c. 42, s. 25, must be unconditional in order to give the court jurisdiction to entertain it.*

*Where, therefore, the statement of the case was subject to a power given to either party to turn the special case into a special verdict for the purpose of having a writ of error, the court refused to hear it argued, unless the parties agreed absolutely to be bound by the special case.*

THIS case came on for argument in the form of a special case stated under a judge's order, by virtue of the statute 3 & 4 W. 4, c. 42, s. 25. At the end of the facts set out in the special case there was a not uncommon statement to the effect, that the court was to draw any inference from the facts which a jury might have drawn, and that either party should have the right to turn the special case into a special verdict in order to take the opinion of a court of error.

Channell, Serjeant, (Peacock with him,) for the plaintiff, having read the terms of the special case, was about to commence his argument when the court stopped him.

Cresswell, J. The effect of the clause at the end of the special case is likely to lead to great inconvenience, and has before met with grave reprehension from Lord Tenterden and other

learned judges. How are the facts to be hereafter stated if necessary. Our judgment may be unanimous in favour of the plaintiff or defendant, but we may each draw different inferences from the facts. I hardly think the statute in question authorizes anything as to special verdicts.

Maule, J. What the act enacts is this:—"That it shall be lawful for the parties after issue joined by consent, and by order of any of the judges of the superior courts, to state the facts of the case in the form of a special case for the opinion of the court, and to agree that judgment shall be entered for the plaintiff or defendant by confession, or of *nolle prosequi* immediately after the decision of the case or otherwise, as the court may think fit, and judgment shall be entered accordingly." Now, the act refers to an absolute consent to a special case only, and an agreement to be bound by the decision given upon it. In the present case there is a condition, that each party shall be at liberty to turn the special case into a special verdict if he pleases, and therefore, no such absolute consent as the act requires, and as that upon which alone the court is authorized to proceed to decide the special case. If the parties choose to agree absolutely to argue the matter on the facts stated in the special case, they can do so, and then the court will proceed to hear them, but at present there is no satisfactory agreement to the special case, within the meaning of the section of the act in question, and therefore, unless the parties can agree unconditionally, the case must be struck out.

On the application of Kinglake, Serjeant, for the defendant, the other side assenting, the cause was ultimately allowed to stand over for a short time, to admit of the parties if possible coming to an absolute agreement upon the facts stated in the special case.

#### Court of Exchequer.

*Barker and another v. Berry.* Jan. 28, 1848.

#### STET PROCESSUS.

*Where a defendant obtained a rule nisi for judgment as in case of a nonsuit, to which, under the circumstances, he was not entitled, and the plaintiff offered a stet process, the court discharged the rule with costs, unless the defendant agreed to the stet process in a week.*

In this case a rule had been obtained calling upon the plaintiff to show cause why the defendant should not have judgment as in case of a nonsuit.

Bramwell for the plaintiff. The plaintiff in this case had offered a *stet process*. The defendant, who appeared by guardian, had taken the benefit of the Insolvent Debtors' Act, and the plaintiff himself was an insolvent. Since the defendant became insolvent no steps had been taken.

**Birnie.** Yes, issue has been taken; besides there is no allegation of insolvency at all, although there is an allegation of belief; but information of the insolvency of the defendant did not come to the plaintiff since issue joined. *Wainwright v. Gibson*, 9 Dow. 100. In this case issue was joined on the 12th June.

**Bramwell.** It is stated in the affidavit that issue was joined in June last. Now the court has held that the jurat forms no part of the affidavit, and without the jurat there is nothing to which the word last can refer, and therefore that word becomes unintelligible. But there is another objection. The defendant was admitted to defend by guardian, and there was no order that he was to defend by attorney, and this rule was obtained on behalf of defendant by a person who calls himself the attorney of the defendant. When the defendant becomes of age during the action, and wishes to change the guardian by whom he appears for an attorney, he should obtain an order for that purpose. Further, the affidavit is instituted in the names of the two plaintiffs against the defendant, and he had an affidavit that before the affidavit was sworn on behalf of the defendant one of the plaintiffs died.

The Court inquired if the defendant would consent to a *stet processus*.

**Birnie** had no authority to do so.

**Per Curiam.** The rule must be discharged with costs, unless a *stet processus* be agreed to in a week.

### Court of Bankruptcy.

*In re Hammon, Ex parte Davison.* Feb. 5, 1848.

#### BANKRUPT'S APPRENTICE. — ALLOWANCE TO, FOR FEE.

Held, That the 6 Geo. 4, c. 16, s. 49, which authorises a commissioner to order a sum to be paid out of a bankrupt's estate, on behalf of an apprentice, only applies when the fiat operates as a discharge of the indentures of apprenticeship.

Semble, That when a fiat issues against a jewel-case maker, who also carries on the business of an architect, the fiat does not discharge the indenture of an apprentice to the business of an architect.

The bankrupt, H. J. Hammond, carried on business as a jewel-case maker, in Greek Street, Soho, and also the business of an architect in Threadneedle Street. Shortly before the bankruptcy, R. Davison was apprenticed to the bankrupt, to learn his business as an architect, and his friends paid the bankrupt an apprentice fee of 150*l*. Application was made under these circumstances to Mr. Commissioner Goulbourn, on behalf of the apprentice, to order any sum he thought reasonable, to be paid to or for the use of the apprentice, out of the bankrupt's estate, under the 49th section of the 6 G. 4, c. 16.

Mr. Commissioner Goulbourn, after taking time to consider the application, declined to make any order. Taking the whole scope of the 49th section into consideration, he was of opinion, that it was only contemplated the commissioner should make an order, when the fiat operated as a complete discharge of the indenture, whereby the apprentice was bound to the bankrupt. Here the bankrupt was made bankrupt as a jewel-case maker, and it did not follow that his business as an architect would be put a stop to, or that the apprenticeship to him as an architect was at an end. The case of *Ex parte Fussell*, 3 Mon. & Ayr. was the case of an articulated clerk to an attorney, and not perhaps precisely in point, but the principle was plainly deducible from it, that the statute only applied to cases in which the apprenticeship was put an end to by the fiat. Here the indentures were not rendered invalid. The act, as he understood it, only discharged the apprentice of a trader who became bankrupt as such trader, which was not the present case.

Application refused.

### Nisi Prius.

*Ree v. Boulton.* Oxford Spring Assizes, March 3, 1848.

#### FORGERY AT COMMON LAW.—UTTERING.

The prisoner was indicted for forging a railway-pass, to enable him to pass free on the Great Western Railway between certain stations mentioned in the indictment. There was a count for uttering the pass, knowing the same to be forged. The jury found the prisoner guilty of the uttering only.

**Carrington** submitted, that the judgment must be arrested on the ground, that as the forgery of this document was only a forgery at common law, it was not an indictable offence to utter such an instrument. The offence of uttering was not alluded to in any of the earlier cases on forgery, nor was it mentioned in the earliest statute on the subject, viz., that relating to the forgery of records in the reign of Richard the 2nd. It was not introduced into the statute law until the reign of Geo. 2.

**Keating**, contra, contended, that as this forgery was a misdemeanor at common law, it followed that it was also a misdemeanor to utter the document in question, and he referred to a precedent in Tremaine's Entries.

**Cresswell, J.** I do not find any case in which an indictment has been sustained for uttering a forged instrument at common law, unless a fraud has been actually perpetrated, and that is not the charge in the present indictment, nor is my brother Patteson aware of any case on the subject. I have no doubt that the forgery of this instrument was a forgery at common law, but I am of opinion that the charge of uttering cannot be sustained.

Judgment arrested.

# ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

The previous Sections of this Series of the Digest will be found as follow:—

- Registration of Voters' Appeals, pp. 15, 347.
- Law of Attorneys, p. 42.
- Law of Railways, pp. 71, 178.

## Courts of Equity:

- Law of Wills, p. 121.
- Construction of Statutes, p. 149.
- Principles of Equity, p. 222.
- Pleading, p. 241.
- Practice, p. 268.
- Costs, p. 197.
- Evidence, p. 299.

## Courts of Common Law:

- Construction of Statutes, p. 373.
- Grounds of Actions and Principles, pp. 396, 415.
- Pleading, p. 443.
- Practice, p. 465.

## Common Law Courts.

### PRACTICE.

#### AFFIDAVIT.

1. *Entitling*.—Affidavits, on which a rule calling on an attorney to answer the matters in the affidavits has been granted, need not be entitled at all.

But affidavits in answer to the rule must be entitled in the same way as the rule.

Where, however, they were not so entitled, the Court enlarged the rule, in order that they might be amended. *Grantham, in re*, 4 D. & L. 427.

2. *Jurat*.—Where a rule is obtained on an affidavit, by two or more deponents, the jurat of which is defective, in not containing the names of the deponents, pursuant to Reg. Gen., Trin. T., 1 G. 4, the Court will discharge the rule with costs. *Cobbett v. Oldfield*, 4 D. & L. 492.

Case cited in the judgment: *Blackwell v. Allen* 7 M. & W. 146.

And see *Habeas Corpus*; *Certiorari*; *Titles of Affidavits*.

#### APPEARANCE.

*Partner's authority*.—Where a partner had been taken in execution on a judgment signed on a warrant of attorney given by a co-partner without the authority of the former, and without his knowledge of the proceedings in the action, the Court set aside the proceedings, and discharged the defendant: one partner not having authority to enter an appearance or submit to judgment on behalf of the firm. *Hambridge v. De la Crouée*, 4 D. & L. 466.

Case cited in the judgment: *Stead v. Salt*, 3 Bing. 101; 10 Moore, 389.

See *Ejectment*, 1.

#### ARBITRATION.

See *Judgment as in Case of Nonsuit*; *Nisi Prius Order*.

#### ARREST.

*Queen's Servant*.—The Somerset Herald-at-Arms is one of the Queen's servants in ordinary with her, and bound to attend her whenever required, as well as on state ceremonials; and is therefore privileged from arrest. *Dyer v. Disney*, 16 M. & W. 312.

#### ASSESSING DAMAGES.

See *Error*.

#### ATTACHMENT.

See *Habeas Corpus*.

#### ATTESTATION.

See *Warrant of Attorney*.

#### CERTIORARI.

*Entitling affidavit*.—Affidavits in support of a rule for a certiorari ought not to be entitled at all.

And where they were entitled "*In the matter of the Queen v. Robt. Wallwork and Jas. Wallwork*," (the name of the proceedings in the Court below which it was sought to bring up being, "*The Queen v. Robt. Wallwork and Jas. Wallwork*,") the Court held them irregular, and discharged the rule. *Wallwork, ex parte*, 4 D. & L. 403.

#### DEMURRER.

See *Error*.

#### EJECTMENT.

1. *Irregular notice to appear*.—The Court refused to grant even a rule nisi for judgment against the casual ejector, where the notice at the foot of the declaration required the tenant to appear "on the 1st day of the term, instead of in the term generally. *Doe d. Burton v. Roe*, 3 C. B. 607.

2. *Service on executor*.—Service on one of two co-executors who were in possession of the premises: *Held*, sufficient for judgment against the casual ejector. *Doe d. Strickland v. Roe*, 4 D. & L. 431.

#### ERROR.

*Assessment of damages*.—*Repleader*.—*Costs of a demurrer*.—A declaration for a conspiracy to prevent the plaintiff's being employed as an actor, stated, by way of inducement, that the plaintiff was about to exercise the profession of an actor for emolument, and that he did become an actor, and used and exercised that profession; and then alleged the conspiracy of the defendants, and its results. The defendants pleaded, 1st, not guilty, then two pleas denying these matters of inducement, and a fourth, stating special matter, which was demurred to. The demurrer was determined by the Court in favour of the plaintiff. A venire was awarded, to try the issues and to assess damages. The jury found the issues of fact for the defendants, but assessed no damages in respect of the confession of a cause of action contained in the 4th plea. Judgment was given for the defendants, with costs of suit, but without an award of costs of the demurrer:

*Held*, that, a verdict having been found for the defendants upon an issue that went to the whole cause of action on the merits, the want of an assessment of *damages* was not error; and, for the same reason, that a repleader was unnecessary, though (*come semble*) the issues joined on the 2nd and 3rd pleas were immaterial. *Held*, also, that the judgment was erroneous, in not awarding *costs* of the demurrer, pursuant to the 3 & 4 W. 4, c. 42, s. 34.

But *held*, that, upon this writ of error brought by the plaintiff, the Court could not simply reverse the judgment of the Court below, but must give such judgment as that Court ought to have given, viz., a judgment for the plaintiff on the demurrer, with costs, and for the defendants on the issues found for them. *Gregory v. Duke of Brunswick*, 3 C. B. 481.

Cases cited in the judgment: *Gwynne v. Burnell*, 6 N. C. 433; 2 Scott, N. R. 711; 2 C. & F. 572; *Negelen v. Mitchell*, 7 M. & W. 612; 1 Dowl. N. S. 110; *Codrington v. Lloyd*, 8 Ad. & E. 449; 3 N. & P. 442; *Wood v. Suckling* (or *Sutcliffe*), Cro. Jac. 439; 1 Roll. Rep. 293; *Gregory v. Fedes*, 2 Keb. 506, 535; *Parker v. Harris*, 1 Salk. 262; *Gildart v. Gladstone*, 12 East, 668; *Rex v. Bourne*, 7 Ad. & E. 58; 2 N. & P. 248.

#### EXECUTION.

It is no ground of objection to a defendant's being charged in execution, that the plaintiff had on a former occasion repudiated the action. *Revell v. Wetherell*, 3 C. B. 605.

#### EXECUTOR.

See *Ejectment*, 2.

#### HABEAS CORPUS.

*Process in Queen's Bench on affidavit entitled in Exchequer. — Attachment. —* The writ of *habeas corpus ad subjiciendum* runs to Jersey.

A Baron of the Exchequer may, in vacation time, under stat. 1 & 2 Vict. c. 45, s. 1, and in exercise of the common law power possessed before that statute by the Court of Queen's Bench, issue such writ, under the seal of the Court of Queen's Bench, returnable to that Court in term time.

He may do so on affidavits entitled in the Exchequer, inasmuch as the application may be made to him as a Baron of the Exchequer, upon which application he may act, in his discretion, by making the writ returnable in Queen's Bench.

*Semble*, that, if such writ were obtained by fraudulent representation, this Court would quash it on motion.

But this Court will not quash the writ because it appears that the judge who issued it abstained from inquiring into facts which, if known to him, might probably have induced him either to refuse the writ or only to grant a rule *nisi*, especially if such facts may be properly returned.

The writ issued, directed to the Viscount and Gaoler of Jersey, commanding them to

bring up the body of *W.*, to undergo, &c. Return, that the viscount and gaoler took, and the gaoler detained, *W.*, by virtue of a sentence of the Royal Court of Jersey, which was set out, and which stated that, in a cause depending before them, *W.*, when the Court was about to deliver an interlocutory judgment, interrupted, by uttering in the most unbecoming tone a protest against the competency of the Court; and that the Court, conformably with an article in the Jersey laws ordering that all persons who shall have been wanting in respect to the bailiff should be imprisoned until they had asked pardon and paid the fine imposed, and considering that the bailiff had in the course of the cause ordered *W.* to be more respectful, condemned *W.* to a fine of 10*l.* and to ask pardon of the Court; and *W.*, having refused to comply, was sent to prison until he should have obeyed; that the sentence was legal according to the law of Jersey; that, by such law, the viscount and gaoler were obliged to take and the gaoler to detain; that they had not, and by such law could not have, any warrant other than the sentence; that the Court was presided over by the bailiff, assisted by judges called jurats, and had the power of punishing such a contempt in the manner directed by the sentence; that there was such an article as mentioned in the sentence; that the matters in the sentence were true; that the sentence was read aloud in the hearing of *W.*, and was duly entered in a book of record called "The Book of Criminal Prosecutions," being the proper book for the purpose; and that the sentence was in due form, and a sufficient authority for the taking and detaining. *Held*,

1. That affidavits could not be received for the purpose of showing that the Royal Court had acted inconsistently with the law of Jersey.

2. That the return was not objectionable for want of showing a warrant for the caption or detainer.

3. That, as the words used might be, and were by the Royal Court adjudged to have been, uttered in such a manner and tone as made them contemptuous, this Court would consider that there had been a contempt.

4. That it sufficiently appeared that *W.* had been sentenced to ask pardon of the Court for the contempt, and was legally imprisoned until he obeyed.

Prisoner remanded.

Objection having been made to the return, on behalf of the prisoner, and counsel having been heard against the objection, one counsel was allowed to reply in support of it. *Carus Wilson*, in re, 7 Q. B. 984.

Cases cited in the judgment: *Hobhouse*, in re, 3 B. & Ald. 420; 2 Chitt. Rep. 207; In re Clarke, 2 Q. B. 619; *Mayhew v. Locke*, 7 Taun. 63.

#### JUDGMENT AS IN CASE OF NONSUIT.

*Order of reference.*—Issue was joined in a country cause on the 19th of March. On the 20th an agreement to consent to an order to refer was entered into by the attorneys on both

sides, the award to be made on the 1st of June. No step was taken to draw up the order to refer by either party; nor was any further proceeding taken by the plaintiff in the cause: *Held*, that a motion for judgment as in case of a nonsuit in the ensuing Michaelmas Term, was regular. *Fontainemoreau, Le Comte de, v. Encontre*, 4 D. & L. 425.

## JURAT.

See *Affidavit*, 2.

## NISI PRIUS.—ORDER.

*Rule of Court*.—An order of *nisi prius*, referring a cause to arbitration, may be made a rule of Court, without any express reservation of a power so to do. *Millington v. Claridge*, 3 C. B. 609.

## PARTICULARS OF DEMAND.

*Stay of Proceedings may be waived*.—A defendant who has obtained an order for particulars of the plaintiff's demand, with a stay of proceedings until they are delivered, may waive the delivery of such particulars, and plead or demur to the declaration. *Maunder v. Collett*, 3 C. B. 554; S. C., 4 D. & L. 456.

## PARTNER.

See *Appearance*.

## PEREMPTORY UNDERTAKING.

*Enlarging thereof*.—A plaintiff who is prevented by accident from trying, pursuant to his peremptory undertaking, should come to the Court to have it enlarged and not proceed to trial after the time limited in his peremptory undertaking has expired.

And where he did not do so, but gave a fresh notice, and proceeded to trial after the time limited by his undertaking had expired, and obtained a verdict in the absence of the defendant, who refused to attend, the Court set aside the verdict so obtained with costs. *Bushell v. Slack*, 4 D. & L. 385.

Case cited in the judgment: *Lumley v. Dubourg*, 3 D. & L. 80; 14 M. & W. 295.

## REPLEADER.

See *Error*.

## RULE TO COMPUTE.

*Production of note*.—*Variance in the maker's name of note*.—*Semble*, that it is not necessary, upon a rule to compute to produce the bill or note before the Master. At all events, a variance between the name of the defendant on the record and that in the bill or note, will not justify the Master in declining to proceed on the rule. *Davis v. Barker*, 3 C. B. 606; S. C., 4 D. & L. 468.

## SCIRE FACIAS.

*Rule to show cause*.—Where final judgment has been obtained against a defendant who dies before execution and a *sci. fa.* has issued (after rule to show cause) against his personal representative, to revive the judgment, and has been returned, a *sci. fa.* may issue, without a rule to show cause, against the heirs and tenants, though the judgment be more than 15 years

old. R. Gen. Hil. 2 W. 4, I. 79, applies to the first *sci. fa.* reviving the judgment in such case, and not to the second. *Wright v. Madocks*, 8 Q. B. 119.

## STAYING PROCEEDINGS.

Eleven separate actions were brought against eleven members of a provisional railway committee respectively, for the same cause of action. The defendants applied to stay the proceedings in the actions, except in that one which the plaintiff should elect, but the Court refused the application. *Giles v. Tooth*, 4 D. & L. 486.

See *Particulars of Demand*.

## TERM'S NOTICE OF PROCEEDING.

Where a rule has been made absolute to set aside a verdict found for the defendant, and for a new trial on payment of costs by the plaintiff, and the plaintiff for more than a year fails to pay the costs, or to take any steps towards availing himself of the rule, the defendant cannot move to discharge it without previously giving a term's notice of his intention so to do.

An objection that such a notice has been given in the name of an attorney other than the attorney upon the record, must be most distinctly pointed out. An affidavit by the plaintiff and his present attorney, (his attorney on the record being dead, and the rule having been made more than nine years ago,) stating "that they had not, nor had either of them, ever been served with any order to change the attorney, nor had they, or either of them, ever had any notice or intimation that any other party had been appointed attorney for the defendant in the place or stead of the attorney upon the record," was held to be insufficient. *Lord v. Wardle*, 3 C. B. 295.

## TITLES OF RULES AND AFFIDAVITS.

In a cause of *A.* against *B.*, the matter was by rule of Court referred to the Master. *A.* died before the Master's report was read. The executors obtained a rule to show cause why they should not be made parties to the first rule: *Held*, 1. That it was not necessary that the second rule should be drawn up on the reading the first, provided it adverted to the first, which was in Court.

2. That the second rule, and the affidavits in it, ought not to be entitled "*A.*, deceased, against *B.*;" and the rule and affidavits being so entitled, the rule was discharged. *Bland v. Dax*, 8 Q. B. 126.

## TRIAL, NEW.

• When a party has tendered a bill of exceptions, *quære*, whether he may, notwithstanding such bill, apply for a new trial on a part wholly distinct from the grounds of exception. *Allen v. Hayward*, 7 Q. B. 960.

## TRIAL BY THE RECORD.

*Variance*.—In debt due on a judgment, the declaration described it as obtained "in the Court of our Lady the Queen, of her Bench

here at Westminster, in the county of Middlesex." Plea, that there is not any record of the said supposed recovery remaining in the said Court of our Lady the Queen, before the Queen herself at Westminster, (named in the declaration the Court of our Lady the Queen, of her Bench at Westminster,) in matter and form, &c. Replication, that there is such a record of the said recovery remaining in the said Court of our Lady the Queen, of her Bench here, in matter and form as the plaintiff hath in the said declaration above alleged: *Held*, that the issue was proved by the production of a judgment of the Court of Common Pleas. *Bradley v. Gray*, 4 D. & L. 458.

#### VENUE, CHANGING.

Where the venue had been changed on the usual affidavit, the Court made absolute a rule to bring it back to the original county in which it had been laid, on affidavit that part of the cause of action arose abroad, and not in this country. *Cundell v. Harrison*, 4 D. & L. 431.

Case cited in the judgment: *Todd v. Robinson*, Michaelmas Term, 1845.

#### WARRANT OF ATTORNEY.

*Attestation*.—Judgment was entered up on a warrant of attorney, executed by principal and sureties. One surety, being arrested, paid the debt, and recovered a proportional part from his co-surety, who afterwards discovered that the warrant had been attested by a person not qualified to act as an attorney, contrary to stat. 1 & 2 Vict. c. 110, s. 9. *Held*, that the co-surety, not being the party who had paid the debt, could not move the Court that the warrant should be set aside for the defective at-

testation and the amount of his contribution repaid him by the plaintiff; and a rule nisi, obtained by the co-surety for this purpose, was discharged, without costs.

*Semble*, (per Patteson, J.,) that, under stat. 1 & 2 Vict. c. 110, s. 9, a party who has introduced an unqualified person as qualified, to attest the execution of a warrant of attorney, cannot afterwards move to set it aside because attested by such person. *Price v. Carter*, 7 Q. B. 838.

#### WRIT OF SUMMONS.

1. *Indorsement on process*.—A writ of summons was indorsed as follows:—"This writ was sued out by G. F. G. and S., of No. 1, Bedford Row, London, agents of Mr. John Toby the younger, of Exeter, in the county of Devon, the plaintiff within named:" *Held*, irregular. *Toby v. Hancock*, 4 D. & L. 385.

Case cited in the judgment: *Lloyd v. Jones*, 1 M. & W. 549; 5 Dowl. 161.

2. A writ of summons was indorsed, "the plaintiffs claim 35l. 3s. 6d., and interest thereon, from the 8th of Sept., 1846, until payment, for debt, and 2l. 10s. for costs:" *Held*, sufficient, and that it need not state what rate of interest is claimed. *Allen v. Bussey*, 4 D. & L. 430.

3. *Defendant's residence*.—*Service of writ*.—A writ of summons describing a company as now or late carrying on business in King William Street, in the City of London, is defective; and service of the writ on a director in the county of Middlesex, is irregular. *Pilbrow v. Pilbrow's Atmospheric Railway Company*, 4 D. & L. 450.

### BUSINESS OF THE COURTS.

#### COMMON LAW SITTINGS.

##### Queen's Bench.

*In and after Easter Term, 1848.*

##### MIDDLESEX.

##### *In Term.*

1st Sitting, Monday . . . . . April 17

And two or three following days at 11 o'clock.

2nd Sitting, Thursday . . . . . April 27

And subsequent days at Eleven o'clock.

3rd Sitting, Wednesday . . . . . May 10

At  $\frac{1}{2}$  past Nine o'clock precisely, for Undefended Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sitting after Term, Saturday . . . . . May 13

At half-past 9 o'clock.

##### LONDON.

##### *In Term.*

Sitting at 10 o'clock, Thursday . . . . . May 11

For Undefended Causes and such as the Judge considers fit to be taken.

##### *After Term.*

Monday . . . . . May 15  
(To adjourn.)

##### Exchequer of Pleas.

*In and after Easter Term, 1848.*

##### *In Term.*

##### IN MIDDLESEX

1st Sitting, Monday . . . . . April 17

2nd Sitting, Thursday . . . . . 27

3rd Sitting, Thursday . . . . . May 4

##### IN LONDON.

1st Sitting, Wednesday . . . . . April 26

2nd Sitting, Wednesday . . . . . May 3

##### *After Term.*

##### IN MIDDLESEX.

Saturday . . . May 13

##### IN LONDON.

Monday . . . May 15

(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 18, 1848.

‘Quod magis ad Nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

### THE LAW RELATING TO RIOTS AND UNLAWFUL ASSEMBLIES.

At a time when the peace of the metropolis, and of other great towns in the kingdom, has been threatened or disturbed by riotous and unlawful assemblies, which have attracted the attention of both Houses of Parliament, it may not be considered inopportune shortly to advert to the state of the law upon this subject.

All the text writers endeavour to establish a distinction between a riot and unlawful assembly, but when their definitions are scrutinized, and their correctness tested by their application to adjudged cases, it must be admitted that the boundary line between an unlawful assembly and a riot is not very satisfactorily defined. Without adopting precisely the definition to be found in any of the books, we may perhaps venture to suggest, that a riot is a premeditated assembly of three persons or more, accompanied or followed by some circumstances of a violent or turbulent nature or character, tending to create apprehension or terror; and that an unlawful assembly is a meeting of several persons, under such circumstances as seem calculated to endanger the public peace. To constitute either offence it is not necessary that there should be actual personal violence committed,<sup>a</sup> and an assembly may be unlawful, although not accompanied or followed by any circumstance of a violent character, if it be a

meeting for a purpose which, if executed, would render the parties rioters. A meeting may be riotous, whether the purpose for which it assembled be lawful or unlawful.<sup>b</sup> If several persons meet together for any purpose, however innocent and laudable, and afterwards confederate and act violently or in disturbance of the public peace, they are as much rioters as if they had assembled originally for the purpose of committing some illegal act.<sup>c</sup> In riots all are principals, so that any person encouraging, promoting, or taking part in a riot, by words, signs, or gestures, or wearing any badge or ensign of the rioters, is himself to be considered a rioter.<sup>d</sup> Infants above the age of discretion, as well as women, are punishable as rioters.<sup>e</sup>

The circumstances of alarm and apprehension which are essential to give to an assembly met for a lawful purpose, and not committing any act of positive violence, the character of an unlawful assembly, were very clearly pointed out by Mr. Baron Alderson, in the case of *The Queen v. Vincent*.<sup>f</sup> The learned Baron is reported to have said in that case:—“Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an unlawful assembly, and in viewing this question the

<sup>a</sup> 1 Hawk, P. C. c. 65, s. 1.

<sup>c</sup> 1 Hawk, P. C. c. 65, s. 3.

<sup>d</sup> *Rex v. Boyce*, 4 Burr. 2073; *Clifford v. Brandon*, 2 Camp. 370.

<sup>e</sup> 1 Hawk, P. C. c. 65, s. 14.

<sup>f</sup> 9 Car. & P. 91.



jury should take into their consideration the way in which the meetings were held, the hour at which they met, and the language used by the persons assembled and by those who addressed them, and then consider whether firm and rational men, having their families and property there, would have reasonable ground to fear a breach of the peace, as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage." All persons joining an assembly of this kind, or who give countenance or support to it in any way, are liable to indictment and guilty of a breach of the law.

At various periods, when the public tranquillity has been menaced or disturbed by meetings of a turbulent or seditious character, the legislature has passed acts to meet the supposed exigencies of the time by the suppression of such assemblies. We propose briefly to enumerate the principal statutes now in force bearing upon the subject. One of the earliest acts in point of date, and certainly not the least important in its practical application, to which we deem it necessary to allude, is the 13 Car. 2, c. 5, which, after reciting the mischiefs of tumultuous petitioning, enacts, that no person shall solicit the getting of hands or other consent of any persons above the number of twenty, to any petition, &c., to the king or the houses of parliament, for alteration of matters established by law in Church and State; unless the matter thereof shall have been first consented unto and ordered by three justices, or by the major part of the grand jury, or in London by the Lord Mayor, Aldermen, and Common Council; and that no person shall repair to his Majesty or the houses of parliament, upon pretence of presenting or delivering any petition, accompanied at any one time with above the number of ten persons; upon penalty for each offence not exceeding 100*l.* and three months imprisonment; such offence to be prosecuted in the King's Bench or at the Assizes or Quarter Sessions, within six months, and proved by two credible witnesses. It was contended in *Lord George Gordon's case*, (Doug. 571,) that this statute was impliedly repealed by the Bill of Rights, which declares "all commitments and prosecutions for petitioning illegal;" but Lord Mansfield said, it was the unanimous opinion of the Court of Queen's Bench that the 13 Car. 2 was in full force.

Perhaps the next statute in order and

importance is the 1 Geo. 1, st. 2, c. 5, which is generally known as the Riot Act. By the 1st section of this statute, if twelve persons or more be unlawfully, riotously or tumultuously assembled together, to the disturbance of the public peace, and do not disperse after being commanded by proclamation made by any justice, sheriff, undersheriff, mayor, bailiff, or other head officer, but continue together to the number of twelve, for the space of one hour after such proclamation, they are declared guilty of felony. The 2nd section provides as to the manner in which the proclamation shall be made, and gives the form, which is as follows:—

"Our Sovereign Lady the Queen chargeth and commandeth all persons to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.

"God save the Queen!"

By subsequent sections, persons so assembled, and not dispersing within an hour, are liable to be seized and taken before a justice, and if killed, maimed, or hurt in resisting being dispersed, seized, or apprehended, the constables, &c., are indemnified. And preventing the proclamation being made is also felony; and when the proclamation is hindered, those who continue assembled to the number of twelve or more, and do not disperse within an hour, are guilty of felony.

Under this act, offenders were declared liable to suffer death as in case of felony, without benefit of clergy, but the 1st Vict. c. 91, provided that persons convicted under the 1 Geo. 1, st. 2, c. 5, should not suffer death, but be liable to transportation for life, or not less than 15 years, or imprisonment, with or without hard labour, for any period not exceeding three years. It may be observed, that to sustain an indictment under this statute, it must appear that the magistrate or other officer read the proclamation in the precise terms given by the act. The proclamation was held to be insufficient where the words "God save the King" were omitted.<sup>s</sup> The hour mentioned in the act is to be computed from the first reading of the proclamation, although the magistrate or officer may afterwards read it a second or a third time,<sup>h</sup> and a person who substan-

<sup>s</sup> *Rez v. Child*, 4 Car. & P. 442.

<sup>h</sup> *Rez v. Woolcock*, 5 Car. & P. 516, per *Patleson, J.*

tially continued to remain at the meeting for an hour, will be liable to a conviction, although it should not appear that he continued with the mob for every minute of the hour.<sup>1</sup> It is perhaps scarcely necessary to add that, although reading the Riot Act as directed under this statute, renders offenders liable to more severe penalties, the meeting may be riotous and illegal at common law, without reading any proclamation, and without any reference to the Riot Act.

The next statute in point of order is the 39 Geo. 3, c. 79, against secret societies, which, after declaring that certain societies named shall be suppressed, proceeds to declare societies the members of which take unlawful oaths, or where the names of the members shall be kept secret, or where there are divisions or branch societies, unlawful; and persons corresponding with such societies, or aiding them, are declared to be guilty of an unlawful combination and confederacy. Persons offending against this act are liable to be proceeded against summarily before a magistrate, or by indictment. The punishment in case of summary jurisdiction is confined to three months imprisonment in the gaol or house of correction, or 20*l.* fine;<sup>2</sup> and in case of conviction upon an indictment, the offender is liable to be transported for seven years, or imprisoned for any period not exceeding two years, at the discretion of the court.

The 57th Geo. 3, c. 19, contained many enactments of a temporary character, together with some provisions of a different nature, still in force. Amongst the latter is the 23rd section, referred to in a late communication from the Metropolitan Police Commissioners, in reference to a proposed meeting in Trafalgar Square, which enacts:

“That it shall not be lawful for any person to convene, or to give any notice for convening, any meeting consisting of more than 50 persons, or for any number of persons exceeding 50, to meet in any street, square, or open place in the city or liberties of Westminster or county of Middlesex, within the distance of a mile from the gate of Westminster Hall, (except such parts of the parish of St. Paul’s, Covent Garden, as are within such distance) for the purpose of considering or of preparing any petition, &c., for alteration of matters in church

or state, on any day on which the two houses or either house of parliament shall meet and sit, nor on any day on which the courts shall sit in Westminster Hall. And that if any meeting or assembly for such purposes shall be assembled or holden on such day, it shall be deemed an unlawful assembly.”

The 25th section declares, that societies taking unlawful oaths, &c., and electing committees or delegates, shall be deemed unlawful combinations and confederacies, and (by section 28) persons permitting unlawful meetings of such societies, or of any division or committee of them, to be held on their premises, are subjected to a penalty, and, if licensed, to be deprived of their license.

The 60 Geo. 3, and 1 Geo. 4, c. 1, prohibits meetings and assemblies for the purpose of training, drilling, or practising military exercise without lawful authority, and persons present at, attending, or aiding and assisting in such meetings, for the purpose of training or drilling others, are, upon conviction, liable to transportation for seven years, or imprisonment not exceeding two years, at the discretion of the court; and persons attending or being present at such meetings for the purpose of being trained or drilled, are liable, upon conviction, to be punished by fine and imprisonment, not exceeding two years, at the discretion of the court.

The latest of the statutes to which we deem it necessary to call attention, is the 7 & 8 Geo. 4, c. 30, which enacts, (by section 8,) that persons riotously assembled, and unlawfully demolishing, destroying, or pulling down, or beginning to demolish, &c., any church, chapel, house, building used in trade or manufacture, or machinery proposed for or employed in any manufacture or mine, shall be guilty of felony, and suffer death as a felon. The beginning to pull down, as mentioned in the act, means a demolition of a part with intent to demolish the whole;<sup>3</sup> and it seems it must be proved that some part of the freehold was destroyed; and it is not enough to prove that window shutters or doors were demolished.<sup>4</sup> Attempting to destroy a house, by setting fire to it, is within the act. Under this act, (by sect. 26,) principals in the second degree and accessories before the fact, are punishable in the same manner as principals in the first degree, and accessories after the fact are liable to be imprisoned for any term not exceeding two years.

<sup>1</sup> *Rex v. James, Russ. on Crimes & Mis. by Greaves, vol. 1, p. 277.*

<sup>2</sup> The justices may mitigate the punishment, so it is not reduced to less than one-third of the fine or imprisonment directed by the act. Sect. 9.

<sup>3</sup> *Ashton’s case, 1 Lewin’s Cr. Ca. 296.*

<sup>4</sup> *Rex v. Howell, 9 Car. & P. 437.*

The statutes above briefly enumerated, and others of more ancient date, to which it does not seem so necessary to direct attention, are merely in aid of the common law, which authorises proceedings, not only by magistrates, sheriffs, peace officers, constables, and others, but by private persons for restraining and suppressing riots. Magistrates are, of course, peculiarly required and expected to restrain riots and take the rioters into custody, and for this purpose they may call upon any or all of the Queen's subjects to assist them, which they are bound to do upon reasonable warning.<sup>m</sup> The duties of private persons, as well as of public officers, in cases of this nature, are stated with so much ability and precision by the late learned Chief Justice Tindal, in his address to the Bristol grand jury, after the riots of 1831, that we make no apology for publishing the following extract, which contains an admirable summary of the law on this subject:—

"By the common law every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the magistrate, to suppress a riot, by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose, he may stop and prevent others whom he shall see coming up, from joining the rest; and not only has he the authority, but it is his bounden duty as a good subject of the king, to perform this to the utmost of his ability. If the riot be general and dangerous, he may arm himself against the evil doers to keep the peace. It would undoubtedly be more prudent to attend and be assistant to the justices, sheriff, or other ministers of the king in doing this, for the presence and authority of the magistrate would restrain the proceeding to such extremities until the danger were sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms; and at all events the assistance given by men who act in subordination and concert with the civil magistrate, will be more effectual to attain the object proposed than any efforts, however well intended, of separate and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself, and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the

same obligation, and invested with the same authority to preserve the peace of the king as any other subject. If the one is bound to attend the call of the civil magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly the same exercise of discretion which requires the private subject to act in subordination to and in aid of the magistrate rather than upon his own authority, before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the king not only may, but are bound to do their utmost of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer, is called upon to do all that in them lies for the suppression of riot, and each has authority to command all other subjects of the king to assist them in that undertaking. By an early statute, (13 H. 4, c. 7.) any two justices, with the sheriff or undersheriff of the county, may come with the power of the county, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law; by which record the offenders shall be convicted, and may afterwards be brought to punishment; and here I must distinctly observe, that it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to the call of the magistrate, as they think proper, but every man is bound, when called upon, under pain of fine and imprisonment, to yield a ready and implicit obedience to the call of the magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly."

#### PROCEEDINGS FOR THE REPEAL OF THE CERTIFICATE DUTY.

WE continue our report of the measures adopted for effecting a remission of this impost.

The petitions for abolishing the tax, which at first came from a small number of places, with few signatures, have been followed by remonstrances from larger districts and greater numbers. Both in town and country the members of the profession seem to be effectually aroused. The statement issued by the Incorporated Law Society has

<sup>m</sup> See Russ. on Crimes, vol. 1, 3 ed. p. 286.

furnished the facts and details requisite to be introduced into the petitions, and forcibly explains to the numerous members to whom the petitions have been sent the hardship and injustice of the tax.

An important step has been taken in convening a general meeting of the attorneys and solicitors of London, for Wednesday next, the 22nd inst., at one o'clock precisely, in the Hall of the Incorporated Law Society. But very few occasions have arisen to induce that busy class of men to congregate together. We recollect only three instances: one in the year 1830, when Lord Brougham introduced his sweeping plans of law reform; another on the extraordinary privilege claimed by the House of Commons of sending sheriffs and attorneys to prison who ventured to discharge their duty to the courts and the suitors; and lastly, the proposed removal of the courts from Westminster to the vicinity of the Inns of Court.

The present is undoubtedly a fit subject on which to take the sense of the profession, and to afford its members an opportunity to express their opinions. We hear that, although every one protests against the *injustice* of the tax, there are some (whose judgment deserves respectful consideration) who think it *impolitic* to call for a repeal. They maintain that the certificate duty tends to uphold the respectability of the profession. They decline to go along with the present movement on the ground that this annual *money-qualification* operates as a restraint upon the disreputable class of practitioners.

Now the fact is well known, that in many instances, attorneys practising in an inferior kind of business receive emoluments from other attorneys who are unable to take out their certificates, and who act in the name of such certificated attorneys, contrary to the provisions of the statutes, and by such means not only evade the payment of the duty, but commit many acts of malpractice and oppression on the poor suitors of the courts. So far, therefore, from the annual tax being a safeguard to the public, it furnishes a temptation to the wrong-doer, and affords a pretext for irregular practice. It would be much better to let every one, who is actually on the Roll, practise in his own name, in order that he may come under the direct cognizance of the courts. There have been several cases at the Central Criminal Court, in which it was manifest that this shameful evasion of the law is carried on to a dangerous extent.

The true protection to the public consists in the enactments which enforce a proper

legal education under the supervision of the judges, assisted, as they are, by the several law societies. The stamp duty on the articles,—the premium to the attorney,—the expense of maintenance and education,—the examination into the capacity,—and the publicity of the names of persons seeking to be admitted:—these are the best checks, and if more be needed, let the restraint proceed in the same direction,—let a higher standard of general and legal attainments be established, and the investigation into professional character and conduct be more strictly pursued.

In considering the subject at the ensuing meeting the interests of the larger part of the profession will, no doubt, be duly weighed. The tax presses with extreme severity on young men straggling in the outset of their career with great difficulties in their way; many of whom are possessed of small incomes, which they seek to increase by professional business, and to whom even a hundred a year is of great importance. To such persons the tax of 8*l.* or 12*l.* is an enormous grievance. It should be recollected also that the disbursements of professional men are already very burdensome. They have to sustain, not only the unavoidable expenses of a respectable position, but are called upon to defray large fees of the Court and officers, which constitute a direct tax upon the administration of justice;—they have also to make heavy advances for Stamp duties, fees to Counsel, and expenses of Witnesses,—the repayment of which is long delayed and often altogether lost.

It is assumed by one of our contemporaries, (but who acknowledges he is not well informed on the subject,) that the promoters of the repeal, offer no alternative to the Chancellor of the Exchequer. This is not so. They say in their statement in support of the repeal of the tax, that

“If a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, it ought to be levied not only on the three learned professions, but on all merchants, bankers, manufacturers, traders, and others.

A small tax on each would remove the grievance complained of, and at the same time produce far more than the amount now levied unjustly upon attorneys and solicitors.”

It may be true that the Chancellor of the Exchequer will not venture to attempt the imposition of a poll-tax on all professions and trades, including those influential bodies the barristers, the clergy, and the several classes of medical men; but this only shows more strikingly the injustice of

the imposition. Maintaining, as we do, that the present stamp on the articles of clerkship, and the admission of attorneys,<sup>a</sup> with the large expenses of legal education, are sufficient Property—Qualifications, we protest against any increase of those duties. The proposal to take off the annual payment and pay an additional gross sum upon entering into articles would not be tolerated. A better way would be to revive, to a small extent, the stamp duty on law proceedings.<sup>b</sup> The sum in question, spread over the whole field of litigation, would be an almost “insensible quantity;” but any direct tax on the administration of justice would meet with the stoutest resistance.

#### METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

A meeting of the Committee of Management of the Metropolitan and Provincial Law Association was held on Friday the 10th inst., when, amongst other measures, it was resolved to present a petition to the House of Commons for the repeal of the annual certificate duty; and the committee also resolved to co-operate with the Incorporated Law Society in promoting the repeal of the tax.

The following are the statements in the petition of this Association:—

“That the Certificate Duty on Attorneys, Solicitors, and Proctors, and a Tax on Warrants to prosecute were imposed in 1785, by the 25 Geo. 3, c. 80, to make up an expected deficiency in the shop tax, that such shop tax was afterwards repealed, and the warrant stamp, and all other stamps on law proceedings were also abolished, as taxes on and impeding the administration of justice.

“That the original certificate duty remained, and was afterwards largely increased. At first, if the practitioner resided in London or Westminster, he was charged 5*l.*, and if in any other part of Great Britain, 3*l.*

“That such certificate duties in 1804, by the 44 Geo. 3, c. 98, were raised to 10*l.*, and in 1815, by the 55 Geo. 3, c. 184, to 12*l.* for town, and 8*l.* for country certificates.

“That a stamp duty of 110*l.* was also charged in 1804, by the 44 Geo. 3, c. 98, upon articles of clerkship to attorneys, solicitors, and proctors, and 20*l.* upon their admission, and these sums were increased, in 1815, by the 55 Geo. 3, c. 184, to 120*l.* and 25*l.*

“That by a return made to your honourable

house, the amount paid for certificates from Easter Term, 1844, to 8th March, 1845, was 89,222*l.*

“That by another return, the duties paid on articles of clerkship, on an average of the last 10 years, amounted to the annual sum of 57,996*l.*, and on annual admissions to 9,900*l.*

“Your petitioners submit to your honourable house that these duties are partial, unequal, and unjust.

“That the pupils in the medical profession, and apprentices to trades, pay a duty on their indentures, only proportioned to the premium.

“That the premium on articles of clerkship does not, on the average, exceed 200*l.*, and consequently the duty thereon, if equal justice were observed, ought to be 6*l.* only, instead of 120*l.*

“That no other profession than that of attorneys, solicitors, and proctors, is charged with similar stamp duties, nor is any annual stamp duty imposed on the higher branch of the legal profession.

“That such duties, your petitioners submit, are not founded on any just principle of taxation.

“That if a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, your petitioners submit it ought to be levied, not only on the learned professions, but on merchants, bankers, manufacturers, traders, and others.

“That a small tax on every individual carrying on a trade or profession would remove the grievance complained of by your petitioners, and at the same time produce far more than the amount now levied unjustly upon attorneys and solicitors.

“That it is now, as your petitioners submit, a recognized and established principle, that taxes should be no “class legislation;” that taxes should be general, and not be imposed for the protection of the manufacturing, the agricultural, or any other class.

“That if, therefore, it be wrong to levy imposts on the community for the benefit of a class, it must be equally wrong to impose burdens on one class for the advantage of the rest.

“That the attorneys and solicitors, in common with their fellow subjects, pay at least their equal share of all the taxes imposed on the community at large.

“That the certificate duty, which falls exclusively on their branch of the profession, amounts, on an average of the incomes of attorneys and solicitors, to 4*l.* per cent.; and, therefore, if they are still required to pay the income tax on their professional earnings, they submit, that in fairness and justice they ought to be relieved from the certificate duty, otherwise they will be subjected to a burden of double the amount borne by other classes of the public.

“That by the operation of many recent alterations in the law and the practice of the courts, and by enactments relating to deeds and other documents, the emoluments of th

<sup>a</sup> The sum of 145*l.* invested in these stamps is of course at 5 per cent., 7*l.* 10*s.* a year, and the capital lost. Add the 12*l.* certificate duty, and there is nearly 20*l.* a-year “for leave” (as he petition states) “to pursue a lawful calling.”

<sup>b</sup> Suggested by a correspondent, P. R. A.

profession have been much diminished, although their disbursement in business continue very nearly the same as heretofore. This is submitted to the consideration of your honourable house as another reason, if another were required, why this tax should be repealed.

"That the severe pressure of the certificate tax is strikingly shown by the inability of several hundred attorneys to pay it within the time fixed by the act, the 16th December in each year.

"That in the last year 266 solicitors did not pay it till the following year, and were consequently excluded from the Stamp Office Law List.

"That of these 65 paid only within the last month of the year, and 170 having neglected for upwards of a year, were compelled to give public notice and apply to the court for permission to renew their certificates.

"That it is the interest of the public at large that, so long as by examination and otherwise, a due qualification in point of attainment and character in the candidates is ensured, as few impediments as possible should be placed in the way of individuals desirous of carrying on occupations of public utility, and especially is that the case with respect to the office of attorney and solicitor, as almost all the whole private affairs of the community are carried on under their advice, so that the tax on attorneys and solicitors operates as a tax on suitors."

The prayer of the Petition is,—

"That your honourable house will be pleased to take the subject into consideration for the purpose of doing away with a marked injustice of an unequal and class tax, and of relieving the public of an impediment in the way of carrying on an important profession, and your petitioners and the rest of the attorneys, solicitors, and proctors from the payment of the annual duty on certificates; or that your honourable house will grant such other relief as to your wisdom and justice may seem meet."

#### PROVINCIAL PETITIONS.

The following, besides some of the preceding clauses, are contained in one of the provincial petitions:—

"That your memorialists have long felt themselves, in common with the profession at large, unequally, (and consequently unjustly,) taxed in regard to the duties payable on certificates enabling them to practise, inasmuch as no other profession or trade is subject to the same impost.

"That whilst your memorialists are subject to this payment, no regard is had to the diminution of their emoluments by the various alterations of the law which have occurred, at periods long since past, and more particularly by the late introduction of the Act for the Recovery of Small Debts.

"That the members of the profession, with incomes not exceeding 250*l.* a-year, have been

subject to a payment of 6*l.* per cent. or thereabouts, calculated upon the Income Tax and Duty on Certificates, whilst others of different occupations have been subject to the payment of 3*l.* per cent. only, and this too under circumstances rendering the first-mentioned parties less able to bear the burthen."

The following is a List of places from whence petitions have been presented:—

|                     |                         |
|---------------------|-------------------------|
| Abergavenny.        | Glandilo.               |
| Aberystwyth.        | London and Westminster. |
| Ashburton.          | Lymington.              |
| Ashton-under-Lyne.  | Macclesfield.           |
| Axbridge.           | Market Drayton.         |
| Barnard Castle.     | Molton, South.          |
| Barnsley.           | Monmouth.               |
| Barton-on-Humber.   | Newcastle-under-Lyne    |
| Barnstaple.         | Newport.                |
| Bawtry.             | Newton Abbott.          |
| Berwick-on-Tweed.   | Northallerton.          |
| Bideford.           | Norwich.                |
| Bolton.             | Pickering.              |
| Boston.             | Plymouth.               |
| Botesdale.          | Retford, East.          |
| Bradford.           | Ruthin.                 |
| Brecon.             | Rye.                    |
| Bridgewater.        | St. Helen's.            |
| Brighton.           | Shaftesbury.            |
| Burton-on-Trent.    | Sheffield.              |
| Canterbury.         | Shrewsbury.             |
| Chard.              | Somerton & Langport.    |
| Chippenham.         | Southwell.              |
| Chorley.            | Stafford.               |
| Colne.              | Stamford.               |
| Crickham.           | Stokesley.              |
| Crowle.             | Stockport.              |
| Chichester.*        | Stone.                  |
| Cheltenham.         | Sudbury.                |
| Dartford.           | Sutton Coldfield.       |
| Dartmouth.          | Taunton.                |
| Debenham.           | Tenterden.              |
| Dudley.             | Tenbury.                |
| Easingwold.         | Thirsk.                 |
| Ely.                | Tiverton.               |
| Epworth.            | Torrington.             |
| Exeter.             | Towcester.              |
| Gainsborough.       | Utttoxeter.             |
| Gateshead.          | Wakefield.              |
| Gloucester.         | Walsall.                |
| Gosport.            | Wareham.                |
| Halstead.           | Warrington.             |
| Hanley and Shelton. | Wellington.             |
| Haverfordwest.      | Wells.                  |
| Hereford.           | Weston-on-Sea.          |
| Hinton.             | Whitehaven.             |
| Honiton.            | Wigan.                  |
| Horbury and Ossett. | Wimborne.               |
| Huddersfield.       | Wincanton.              |
| Ilminster.          | Winchester.             |
| Kirton-in-Lindsey.* | Wolverhampton.          |
| Kidderminster.      | Wrexham.                |
| Kingston-on-Hull.   | York.                   |
| Lancaster.          |                         |
| Leominster.         |                         |

No. of signatures, 1,546.

The petition of the Incorporated Law Society, presented by Sir Frederic Thesiger, is printed

in the Appendix to the 20th Report on Public Petitions, No. 480, p. 252.

The following is a List of the members who have presented petitions:—

|                     |                      |
|---------------------|----------------------|
| Sir Thomas Ackland. | Sir Alex. Hood.      |
| Mr. Adderley.       | Mr. Jackson.         |
| Col. Anson.         | Mr. Keppel.          |
| Mr. Bailey.         | Mr. Littleton.       |
| Mr. Bankes.         | Mr. Locke.           |
| Mr. Barkly.         | Mr. Mackinnon.       |
| Mr. Benbow.         | Col. Matheson.       |
| Captain Boldero.    | Mr. Miles.           |
| Dr. Bowring.        | Mr. Moffatt.         |
| Viscount Brackley.  | Mr. Moody.           |
| Mr. Bremridge.      | Mr. Roundell Palmer. |
| Sir J. Y. Buller.   | Mr. Patten.          |
| Mr. Cabbell.        | Col. Powell.         |
| Mr. Christopher..   | Mr. Campbell Renton. |
| Mr. Cobden.         | Mr. Sandars.         |
| Mr. Cockburn.       | Mr. K. Seymour.      |
| Mr. Divett.         | Mr. J. G. Smyth.     |
| Mr. O. Duncombe.    | Mr. Stanley.         |
| Mr. Greenall.       | Sir F. Thesiger.     |
| Mr. Greene.         | Mr. Thicknesse.      |
| Mr. Headlam.        | Col. Thompson.       |
| Mr. Heathcote.      | Mr. Ward.            |
| Mr. Hodges.         |                      |

## NOTES ON EQUITY.

### REVIVOR OF SUIT FOR COSTS.

IN the case of *Andrews v. Lockwood*, which was first reported in 15 Simons, 153, the Lord Chancellor, it appears, in Michaelmas Term last, reversed the order on the ground that the allegation as to the delivery up of the documents ought not to have been inserted in the plea.\*

But his lordship did not express any opinion, whether the rule that there shall be *no revivor for costs*, ought to be altered, in consequence of decrees of courts of equity having, under 1 & 2 Vict. c. 110, the same effects as judgments at law.

The point adverted to by the reporter of the alteration of the law by the Abolition of Arrest Act, is a very important one. The legislature, on taking away the power of imprisonment for debt, gave in return large remedies over the property of debtors. Amongst other enactments, as above observed, decrees and orders in equity, or at law, or in bankruptcy, for payment of money, are, by the 18th section, to have the effect of judgments; and, by the 19th section, if registered with the senior Master of the Common Pleas, such decrees and orders, as well as judgments, will affect real estates.

By the 17th section, judgment debts carry interest at 4 per cent.

A decree or order for the payment of costs is now, therefore, entitled to much more consideration than formerly, and if there were no mode of obtaining satisfaction of these *quasi* judgments than by resort to a bill of revivor, we take it the court will feel bound to alter the rule on which it has hitherto acted.

### FORGERY BY ADDING FALSE ADDRESS TO DRAWER'S NAME ON A BILL.

ALEXANDER BLINKINSOP was tried at the last winter assizes for York, before Mr. Justice Coleridge, upon an indictment charging him with forging and uttering a bill of Exchange. The bill was in the following form:—

"Leeds, October 22, 1847. 148*l.* 7*s.* 9*d.* Three months after date, pay to myself or order, the sum of 148*l.* 7*s.* 9*d.*, value received." Signed, "Alexander Blenkinsop." Addressed, "To Mr. William Wilkinson, Halifax. Payable London." The bill was accepted in the name of "William Wilkinson," and over the acceptance were the words, "Payable at Smiths, Payne, & Co.'s, Bankers, London."

It appeared that the prisoner had in his employment a person named "William Wilkinson," a labouring man, without any property beyond his daily wages, and that the prisoner had induced this person to write his own name across the bill before it was filled up. This William Wilkinson had never lived at Halifax, but it was shown there was a person named William Wilkinson, residing at Halifax, and that the prisoner intended to have it believed the drawing was on Mr. William Wilkinson of Halifax. Under these circumstances, the prisoner was convicted of *forgery*, but the learned judge deemed it proper to reserve a case for the opinion of the judges, before whom the question was argued in Hilary Term last.\*

On the part of the prisoner, it was submitted, in the first place, there was no forgery of the acceptance generally, for at the time the name William Wilkinson was written by the prisoner's servant there was no bill in existence. Neither was this a forgery of the acceptance by way of alteration, as the addition of the drawee's name

\* *Andrews v. Lockwood*, 15 Sim. 295. The reporter states, he was informed that the reversal took place on the ground above stated.

\* *The Queen v. Blenkinsop*, reported, 16 Law Jour. 62, (Crown case reserved).



does not alter the acceptance, for it forms no portion of it. All that was done, it was said, was to substitute "Halifax" for "Leeds" in the description of the drawer, and it did not appear whether, by so doing, a person of more or less substance than the acceptor was designated.

Mr. Baron Alderson asked, if a poor person named Thomas Coutts accepted a bill of exchange, and the word "Banker" was afterwards fraudulently added, it would not amount to a forgery? The prisoner's counsel thought it would not, upon the authority of *The King v. Coutts*.<sup>b</sup>

The judges, however, without calling upon the counsel for the Crown, held the conviction to be right.

### HEALTH OF TOWNS BILL.

As this bill is designed to place all the parochial and other local boards of the kingdom under the superintendence of a government commission, we deem it our duty to call the attention of our readers to the provisions by which the object will be effected, in order that as well the proper interests of the profession, as the good of the public, may at least be taken into consideration.

The evils which the bill seeks to remedy are truly stupendous. It appears, upon the lowest computation, that there are 30,000 lives annually lost in England and Wales which might be saved. The cases of sickness which due attention to the means of securing health would prevent, are probably more than half a million; and the annual expense and loss to the public by these cases of sickness and death is estimated at six or seven millions sterling,—enough to pay the income tax of the whole country!

Such being the magnitude of the evil, we have then to see how it is proposed to effect a remedy.

There is to be a general and central board of health, consisting of five members, of whom two will be paid, and will be presided over by a responsible member of the executive government.

The PUBLIC HEALTH being the end and object to be attained, the means are as follow:—

"1. An unlimited supply of pure water to every house at a very small rate. 2. A general and effective system of sewerage and drainage in all houses, streets, and courts. 3. The removal of nuisances, as slaughter-houses, &c., from crowded neighbourhoods. 4. The erec-

tion of more wholesome abodes for the working-classes. 5. The ventilation of workshops, schools, and public buildings. 6. The establishment of baths, wash-houses, and bathing-places. 7. The formation of gymnasia and exercise-grounds for all classes."

We have looked with some anxiety to the details of the measure, lest they might interfere too much with the local government, which, we think, ought to be preserved. We find that the local administrative bodies will have the following duties confided to them:—

- "To hold meetings for transaction of business;
- To appoint a surveyor;
- To appoint an inspector of nuisances;
- To procure a map of their district;
- To make public sewers;
- To substitute sufficient sewers in case old ones be discontinued;
- To require owners, or occupiers, to provide house-drains;
- To cleanse and water streets;
- To appoint or contract with scavengers;
- To cleanse, cover, or fill up offensive ditches;
- To keep a register of slaughter-houses;
- To provide a sufficient supply of water for drainage, public or private, and for domestic use."

The following powers will also be confided to the local boards:—

- "To enlarge, lessen, alter, arch over, and improve sewers;
- To remake or alter unauthorized sewers;
- To make house-drains, upon default of owner and occupier;
- To require that new buildings be altered, &c., in case of building upon improper levels;
- To alter drains, privies, water-closets, and cess-pools, built contrary to the act;
- To make bye-laws with respect to the removal of filth, and emptying of privies, &c.
- To whitewash and purify houses after notice;
- To require that certain furnaces be made to consume their own smoke;
- To provide buildings to be used as slaughter-houses;
- To make bye-laws with respect to the licensing, &c. of slaughter-houses;
- To inspect slaughter-houses and places used for the sale of meat;
- To alter public buildings improperly built with respect to ventilation;
- To inspect lodging-houses;
- To pave streets, &c.
- To provide places for public recreation;
- To purchase and maintain waterworks."

We shall now proceed to give an analysis of the bill, and will take an early opportunity of adverting to such parts of the measure as may be interesting to our readers, or with which, as practical lawyers, they ought to be acquainted.

<sup>b</sup> Russ. & Ry. 437.

We observe that Lord Morpeth expressed much satisfaction at the result of the labour bestowed upon the bill by the Attorney-General, with the able assistance which he had procured. It is evident, indeed, that much praiseworthy care has been applied in considering the complicated provisions contained in the bill.

THE bill recites, that further and more effectual provisions ought to be made for improving the sanitary condition of towns and populous places in England and Wales, and that the supply of water to such towns and places, and the sewerage, drainage, and paving thereof, should, as far as practicable, be placed under one and the same local management and control, subject to such general supervision as is hereinafter provided.

1. The act may be applied, by order in council, to any part of England and Wales.
2. Interpretation of terms.
3. Act to be applied, &c. by orders in council.

#### *General Board of Health.*

4. General board of health to be constituted.
5. Office, officers, servants, and seal of the general board of health.
6. Superintending inspectors.
7. Salaries and expenses of the general board of health, superintending inspectors, &c.

#### *Preliminary inquiry.*

8. Upon petition of a certain number of householders, superintending inspector to make local inquiry.

9. Notice of inquiry, report and publication thereof: further inquiry, &c.

#### *Application of the Act.*

10. Application of the act upon report of the general board of health: costs of preliminary inquiry, &c.

#### *Local Boards of Health.*

11. Selection of local boards of health by town councils: and 6 W. 4, c. 76: selection of part of local board by town councils, and part by owners and ratepayers. 5 & 6 W. 4. c. 76.

12. Election of members of local board by owners and ratepayers.

13. Number of members of each local board: re-election, &c.: in case of vacancies, remaining members may act: persons elected and selected to serve in respect of one title only.

14. Qualification of elected members.

15. Declaration to be made by elected members of local board: false declaration a misdemeanor.

16. Neglect to make declaration or to act for six months.

17. Disqualifications.

#### *Election of Local Boards of Health.*

18. Qualification of electors and scale of voting. 4 & 5 W. 4, c. 76, s. 40. Proviso.

19. Defects in election, &c. not to invalidate proceedings.

20. Expenses of elections to be defrayed out of general district rate.

21. Local board of health in Oxford and Cambridge, &c. 52 Geo. 3, c. lxxii.; 34 Geo. 3, c. civ.

#### *Meetings, &c. of Local Boards.*

22. Meetings; regulation of business, &c.
23. Offices, and seal of local board.

#### *Local Officers.*

24. Surveyor, inspector of nuisances, clerk, treasurer, &c. Proviso for appointment of clerk and treasurer in corporate districts, &c.; and, in other districts, for appointment of officers whose offices may be abolished; same person may be surveyor and inspector of nuisances, but not clerk and treasurer.

25. Penalty upon officers, &c. interested in contracts, or taking fees improperly.

26. Officers, &c. entrusted with money to give security, and account: summary proceedings in case of failing to account, &c.

#### *District Maps, &c.*

27. Bench marks: district map, showing under-ground works, levels, &c.

#### *Main Sewers and Drains.*

28. Sewers, &c. vested in local board.
29. Making, alteration, and discontinuance of sewers, &c.
30. Cleansing and emptying sewers, &c.
31. Penalty for making unauthorized sewers, &c. building over sewers and under streets.
32. Use of sewers, &c. by persons beyond district.

#### *House Drains, Privies, &c.*

33. No new house to be built without drains: all houses to be properly drained.
34. Privies, &c. in case of new houses: all houses to be provided with privies.
35. Notice of building and re-building with respect to drains, privies, &c.
36. Local board to provide that drains, privies, &c., do not become a nuisance.

#### *Surface Cleansing, &c.*

37. Cleansing of streets, removal of dust, &c.
38. Places for deposit of dust, soil, &c.
39. Offensive ditches, drains, &c. to be cleansed or covered.
40. Penalties for allowing waste water to remain in cellars, and for allowing privies, &c. to overflow: removal of filth on certificate of inspector of nuisances.
41. Houses to be purified on certificate of inspector of nuisances.
42. Fire-places and factories to consume their own smoke.

#### *Slaughter-houses, &c.*

43. Slaughter-houses to be licensed.
44. Local board may provide slaughter-houses: and to make bye-laws with respect to slaughter-houses in general.
45. Inspection of places used for sale of butcher's meat, &c.

The appointment of the clerk, who ought to be an attorney, will remain with the local board.

46. Offensive trades newly established to be subject to regulation of general board of health.

47. Act not to affect present law as to nuisances.

*Ventilation of Public Buildings.*

48. Ventilation of public buildings to be approved by general board of health.

*Lodging-houses and Underground-rooms.*

49. Public lodging-houses to be registered.

50. No cellars to be let as dwellings except under certain conditions: notice of enactments to be given.

51. Management of streets vested in local board.

52. Certain streets and highways to be deemed such, and repaired by local board.

53. Power to require gas and water-pipes to be moved.

54. Notice before laying out new streets: levels to be fixed.

55. Width of new streets.

56. Houses may be set forward in order to improve line of fronts: Local board may purchase premises in order to improve streets.

*Public Pleasure-grounds.*

57. Local board may provide places of public recreation.

*Supply of Water.*

58. Local board to provide sufficient supplies of water, and may erect waterworks, &c.: but to contract in the first instance with water companies willing to supply their district; and not to lay down water in streets already supplied, &c.

59. Compulsory supply of water in certain cases.

60. Pipes laid down by local board to be kept constantly under pressure.

61. No new house to be occupied until provided with means of supplying water for domestic use, drainage, &c.: and all houses to be properly supplied with water for all such purposes.

62. Water for trading or manufacturing purposes.

63. Maintenance and construction of public cisterns for gratuitous use.

64. Penalty for injuring waterworks, diverting streams or wasting water.

65. Foul water in general: by gas-works, &c.

*Reception Houses for the Dead.*

66. Premises for the reception of the dead previously to interment.

67. Depths of soil above coffins, &c.

68. Burial-grounds, &c. dangerous to health.

69. Interments within churches or burial grounds newly erected or formed.

*Purchase, &c. of Lands.*

70. Local board may purchase lands, &c. 8 Vict. c. 19.

*Contracts.*

71. Contracts by local board: composition for penalties in respect of breach of contracts: estimates before commencing works: contracts above the value of 200l.

72. Special district rate.

73. District fund account: general district rate.

74. Property assessable to district rates. 6 & 7 Will. 4, c. 96.

75. Rates may be prospective or retrospective: assessment to district rates in case of unoccupied premises: apportionment of rates between outgoing and incoming tenants, &c.: parts of district may be separately assessed.

76. Private improvement rates.

77. Water-rate.

78. Water-rate payable in advance: power to stop water in case of non-payment of rates.

79. Rates not to exceed a certain maximum.

80. Owners to be rated in certain cases.

81. Description of owner in rates if his name be not known.

82. Rates to be open to inspection.

83. Rates may be amended.

84. Making and collection of rates, &c.: recovery by distress.

85. Form of distress warrant: penalty upon constables for not levying.

86. Evidence of rates.

87. Rates may be mortgaged: no priority amongst mortgagees.

88. Money may be borrowed at low rates of interest to pay off securities bearing a higher rate.

89. Form of mortgage: register of mortgages.

90. Transfer of mortgages: register of transfers.

91. Interest to be paid half-yearly: mortgage debts to be paid off by means of a sinking fund.

92. Receiver may be appointed in certain cases.

*Bye-laws.*

93. Bye-laws of local board.

94. Powers of trustees and commissioners under local acts to cease in certain cases; and their local acts to be repealed, except in so far as they may be saved by order in council: previous proceedings and liabilities to stand: property, &c. of boards abolished transferred to local boards of health.

95. Compensation to persons whose offices are abolished by repeal of local acts: appeal to the treasury: emoluments received under this act to be taken into consideration.

96. Local board to be surveyors of highways; but existing surveyors to recover rates in arrear. Compensation to existing surveyors for loss of emoluments, &c.

97. Road trustees not to collect tolls within any district except for the purpose of discharging existing debts.

98. Existing liabilities to make sewers, &c., not to be discharged.

*Commission of Sewers.*

99. Commission of sewers may be directed to local board. 3 & 4 Will. 4, c. 22.

*General Superintendence.*

100. Superintending inspectors to inquire into management of local boards:

101. Also, may summon witnesses, call for plans, rates, &c.

102. Assist local officers; examine books, &c. of local boards.

103. Notice of certain works to general board of health.

104. General board of health to appoint an auditor.

105. General board of health may direct prosecutions against local board, &c. for breaches of this act.

#### *Arbitration.*

106. Mode of referring to arbitration.

107. Death, &c. of one of several arbitrators; of single arbitrator.

108. Appointment of umpire by the parties; by general board of health. Matters referred to be determined by umpire in certain cases.

109. Evidence and costs: submission may be made rule of court.

110. Declaration to be made by arbitrator and umpire.

#### *Legal Proceedings.*

111. Recovery of damages, &c.

112. Form of conviction.

113. Mode of proceeding before justices: distress how to be levied; not unlawful for want of form.

114. Powers vested in two justices where to be exercised by one: justices, though members of local board, may act.

115. Common informers not to sue without consent of Attorney-General: proceedings for penalties to be taken within six months: application of penalties.

116. Liability to penalty not to relieve from other liabilities.

117. Appeal to quarter sessions.

118. Power of sessions upon appeals against rates.

119. No rate or proceeding to be quashed for want of form, &c.

120. Proceedings in the name of the clerk: mode of describing property of local board: actions, &c. not to abate: execution not to issue for six months: clerk to be reimbursed.

121. Notice of action: limitation of actions: venue: general issue: tender of amends, &c.: money may be paid into court. Security for costs.

122. Persons acting in execution of act not to be personally liable.

#### *Miscellaneous.*

123. Orders in council may be amended and districts extended.

124. Entry upon lands for the purposes of this act: compensation.

125. False evidence punishable as perjury.

126. Penalty for obstructing officers, defacing boards, &c.; upon occupiers preventing execution of works: occupiers to disclose owner's name.

127. Consents of board of health and local body to be in writing.

128. Service of notices upon local board; upon owners and occupiers.

129. Exemptions from stamp duty.

## SELECTIONS FROM CORRESPONDENCE.

### THE NEW MASTER IN CHANCERY.

*To the Editor of the Legal Observer.*

SIR,—The appointment of Mr. Kindersley to a Mastership in Chancery cannot fail to give universal satisfaction.

To a person of his disposition, the judicial chair in Southampton Buildings may be more congenial than an equity judgeship;—but as he is capable in every respect of filling the highest judicial situation, it will be a public loss if he is not promoted when a proper opening occurs.

Having had frequent opportunities, from a very early period in his legal career down to the present time, of observing him both in chambers and in court, I can bear testimony to the rare combination which he possesses of all those qualities which command respect, esteem, and confidence.

It would, I feel assured, give general satisfaction, if some public mark of the high regard entertained for him by all branches of the profession were called forth on the occasion of his quitting the bar, to which he has so long been an ornament.

J. E. W.

*Lincoln's Inn, 10th March, 1848.*

## REFORM OR ABOLITION OF THE ECCLESIASTICAL COURTS.

MR. BOUVERIE has given notice of the following very comprehensive and sweeping motion in the House of Commons:—

“That the Ecclesiastical Courts of England and Wales have been the subject of several public inquiries, which have shown them to be totally incapable of fulfilling the important functions they affect to exercise.

“That these courts have not only to decide questions concerning some of the most important civil rights of the subject, but they exercise a criminal jurisdiction, pretended to be *pro salute animæ*, which touches his property and personal liberty.

“That the law they administer urgently requires amendment.

“That the system of procedure is incompatible with the effectual attainment of the ends of justice.

“That they are not only inefficient but costly.

“That their continued existence is injurious to the subject, and a scandal to the judicial system of the country.”

ORDER OF THE COURT OF  
CHANCERY.

## EASTER VACATION.

Friday, the 10th day of March, in the 11th year of the reign of her Majesty Queen Victoria, 1848.

WHEREAS, by the 1st Article of the 8th of the General Orders of this Court of the 8th day of May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct. And whereas Easter week, or a period equal thereto has usually been observed as a vacation in the several offices of this Court. And whereas Easter week will in the present year fall within Easter Term, his Lordship doth order that the *Easter Vacation* for the present year do commence on Thursday, the 30th day of March instant, and terminate on Saturday, the 8th day of April next. And that this Order be entered with the Registrar and set up in the several offices of this Court.

R. O. WALKER, Registrar.

CHANCERY FEES AND COMPEN-  
SATIONS.

THE following are the statements contained in the petition to the House of Commons presented by solicitors of the Court of Chancery:—

"That under and by virtue of an act passed in the 6th year of the reign of her Majesty, intituled 'An Act for abolishing certain Offices of the High Court of Chancery in England,' the salaries of certain of the officers of the said High Court of Chancery, whose offices are created by the said act, were charged upon the funds of the suitors of the said court, consisting of the Suitors' Fund and the Suitors' Fee

Fund, an annual account whereof and of the charges thereon is made to parliament by the Accountant-General of the High Court of Chancery, as by act of parliament directed.

"That the fees imposed upon the suitors of the High Court of Chancery, by an order empowered by the said first-mentioned act to provide for such salaries and other charges created under the same act, are in many instances in amount nearly three times as much as the old fees previously taken on the same account for the same objects; and that among such fees is the following *per centage* on account of every bill of costs as taxed, *four pounds*, since reduced to *three pounds*.

"That by an order of the House of Commons, made in the present session of parliament, it was referred to a select committee of the house, to inquire into and report to the house, among other things, on the *taxation of suitors* in courts of law and equity by the collection of fees, and the *amount thereof*, and the *appropriation of fees* in courts of law and equity, and as to the salaries and fees received by officers of those courts.

"That from time to time since the passing of the said first-mentioned act, various petitions from solicitors of the said High Court of Chancery, resident in various parts of England, have been presented and laid on the table of the house, praying the house, among other things, to inquire into the fees imposed upon the suitors of the said court in pursuance of the powers of the said first-mentioned act, and into the state and several charges affecting the several funds of the suitors of the said court.

[This petition was intended to have been printed with the report of the debate, but from the pressure of other matter was deferred.]

"It is just and proper to state that many fees have been reduced, especially for office copies, now 4*d.* instead of 10*d.* per folio.—ED.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

*Hunter v. Nockolds.* Feb. 23, 1848.

MASTER'S ORDER FOR FURTHER TIME TO  
ANSWER.

*Under the usual order of the Master for further time to answer, a defendant, unless specially limited to an answer, may file a plea.*

MR. SCHOMBERG stated, that this was an appeal motion on behalf of Sir Francis Vincent, one of the defendants, from a decision of Vice-Chancellor Wigram, under the following circumstances:—Two orders for further time to answer only, having been previously obtained for the above-named defendant, who was residing at Florence; a third order in the usual form was obtained from the Master, under which a plea of the plaintiff's outlawry was filed. The plaintiff considering that the last

order should have followed the terms of the two former, applied to the court below for leave to strike out all parts of the last order, which related to pleading and demurring, and thereby to reduce it to an order for further time to answer only, and he also moved to take the plea off the file for irregularity. Both these motions had been allowed by the Vice-Chancellor, whose judgment is reported in 11 Jur. 1006, and 17 Law Jour. Ch. 96. The present motion was to discharge his Honour's order. *De Minckwitz v. Udney*, 16 Ves. 355; *Waters v. Chambers*, and *Sanders v. Murney*, both in 1 Sim. & St. p. 225; *Hamilton v. Hibbert*, 2 Sim. & St. 225; *Foulkes v. Jones*, 2 Beav. 274; *Arnold v. Arnold*, 1 Phil. 805; (33 & 34 Leg. Obs. pp. 566 and 61); *Foreman v. Gray*, 7 Beav. 196-200, (and 33 Leg. Obs. 586); *Dalton v. Hayter*, 7 Beav. 586, (and 31 Leg. Obs. 112), and *Bovey v. Keighley*,

Mr. Romilly and Mr. Southgate supported the order, upon the grounds of an understanding having existed between the parties at the time of obtaining further time, that the answer was nearly ready to be put in, the then intention being to answer only; and that therefore it was a breach of faith to file a plea, although it was admitted that the outlawry not being perfected at the time of last obtaining further leave from the Master, could not have been then pleaded. They relied strongly upon the decision of Vice-Chancellor Knight Bruce in the case of *Brooks v. Purton*, 1 You. & Col. C. C. 278.

The Lord Chancellor thought it very important to take care that matters referred to the Master, under these orders, should not lead to any misconception as to the practice, but he feared from what he had heard in this case, that there was a great tendency to irregularity on the subject of application to amend. There was no doubt, indeed the plaintiff did not deny it, that where leave to amend was obtained without anything specified as to the form, that the party so obtaining leave would, according to the practice, be at liberty to plead, answer, or demur, as he might be advised. But it was said to be not unusual for parties to obtain leave for time to answer only. His Lordship thought, that the order limiting the nature of the defence must still be special. So long as the order stood it must regulate the practice, and the rights and liabilities of the parties acting under it, could not be displaced without an allegation properly sustained that they had got rid of its effect. It was now said, however, that the court must put a different interpretation on the order, because the parties so understood it at the time. That however formed no reason, even if the understanding was admitted, for the court putting a different interpretation on the order. If the court mistakes its duty or makes an erroneous order, the mistake or the error must be corrected by the court, but not by the plaintiff. As long as the order stood it bound him. If he thought the defendant was not to be allowed time to plead or demur, he ought to have applied to the Master for an order to confine the defendant to an answer, but nothing of that kind occurred, and the order appeared to be merely an ordinary extension of the time to answer, and that by the practice of the court was time to plead, answer, and demur. His Lordship was of opinion, therefore, that the party in strictness had a right to plead, as no step had been taken to confine him to an answer only. The question before him was, whether a person obtaining the ordinary time to answer might put in a plea, and the case made was, that the order ought not be permitted to have the effect that it otherwise would have, because of the understanding that the defence was to be by answer. His Lordship was of an opinion, that the order could not be supported, on the only ground that it ought to be supported, or that it must be discharged.

## Rolls Court.

*Dolly v. Challis.* Jan. 11, 1849.

## AMENDMENT.—ENLARGING TIME.—ORDER OF 1845.

*If the time within which the plaintiff, under an order to amend, and that defendant answer the amendments and exceptions together, is required by the 34th section of the 16th Order, and the 70th Order of 1845 to amend be allowed to expire, the court cannot, as of course, enlarge the time.*

In this case a question arose, whether a plaintiff could obtain, as of course, an order enlarging the time within which an order to amend, and that the defendant might answer the amendments and exceptions together, the amendments were by the 34th of the 16th Order, and the 70th Order of May, 1845, required to be made. It appeared that the answer was filed on the 30th of October, exceptions were taken on the 27th of November, and submitted to on the 6th of December. On the 11th an order was obtained to amend, and that the defendant should answer the amendments and exceptions together. The time within which the amendments were required to be made by the 34th section of the 16th Order, expired on the 10th of January, while the vacation, it was said, prevented any application being made to enlarge the time. The plaintiff could not obtain a common order to amend without abandoning his exceptions, and therefore made the present motion.

Mr. Hallett, for the motion, referred to *Bird v. Hustler*, 1 R. & M. 324, which he contended was applicable, though decided under the old practice, because every order to amend then contained an undertaking to amend within three weeks.

Lord Langdale said, that he could not make the order asked for, unless with the consent of the defendant. At the time when the case referred to was decided, an order to amend did not become void if not acted upon, as it did under the New Orders. If the defendant thought it more for his benefit to put in one answer to the amendments and exceptions, as was most probable, the plaintiff would be able to obtain a new order on notice. If not, he could at all events amend after answer.

## Vice-Chancellor of England.

*Keane v. Lord Keane.* Feb. 25, 1849.

## CONSTRUCTION OF WILL.—REQUEST OF PLATE.

*A gift of all furniture, plate, &c., to wife, for her sole and separate use, but in the event of her decease, the plate to be returned to my surviving heir, and continue in my family: Held, that, on the disclaimer of the testator's present heir, the wife was absolutely entitled to the plate.*

THE late Lord Keane, by his will, amongst other bequests, gave and bequeathed to his

wife Anna Maria, all his furniture, &c., and plate, except his carriages, wine, &c., to and for her own sole and separate use; "but in the event of her decease, the plate to be returned to my surviving heir, and continue in my family." A suit had been instituted for the administration of the trusts of the will. The present Lord Keane was the heir of the testator, and a party to the suit. The questions raised were, whether the wife took an absolute interest in the plate, or only a life interest, and if the latter, whether the heir, at the death of the testator, or at the death of the wife, was entitled.

Mr. James appeared for the present Lord Keane, and disclaimed.

Mr. Bethell appeared for another party.

Mr. Shebbeare, for the wife, was proceeding to mention some cases as to the words surviving heir, but she

Vice-Chancellor said, it was in effect a gift to the wife of everything, except a specific part bequeathed to the present Lord Keane, and which formed a manifest trust for him. The words were, "To be returned," which implied that the person who was surviving heir was a person capable of having a return. The testator in fact felt that he had taken from the heir something which ought to be returned, but Lord Keane having disclaimed, he must declare the wife absolutely entitled.

Vice-Chancellor Knight Bruce.

*Shaw v. Fisher.* Jan. 25 & 26, 1848.

#### SALE OF RAILWAY SHARES.

*Railway shares were sold by auction, and the purchaser paid his purchase-money, but did not take a transfer. The purchaser then sold to a third party, who declined to register himself as owner; Held, that the vendor was entitled to a specific performance against the original purchaser.*

IN November, 1845, Mr. Shaw, being the registered proprietor of 75 shares in the Newry and Enniskillen Railway, sold the same by auction in two lots of 25 shares and 50 shares respectively. Mr. Fisher became the purchaser of the 25 shares for 35*l.* 12*s.* 6*d.*, which sum he paid. The 50 shares were purchased by Franklyn. No transfer of the 25 shares was made to Fisher, and after the sale, Shaw, as the registered proprietor, was called on to pay further calls of 2*l.* and 2*l.* 10*s.* on each share. Fisher sold the shares at a profit, and his agents applied to Shaw to execute a transfer of the 25 shares, the name of the purchaser not being inserted. This was refused, and the same agents, who also acted for Franklyn, then applied to Shaw to execute a transfer of the 75 shares to John Carmichael, which Shaw was willing to do, but Carmichael refused to accept or execute a transfer, or procure himself to be registered as the proprietor of the shares. Shaw then instituted this suit against Fisher to obtain a specific performance of the contract, and that he, Fisher, might pay the calls and

indemnify the plaintiff against the costs incurred by reason of Fisher's not having executed a transfer, &c., and paid the calls then due.

Swanston and Hallett, for the plaintiff, cited *Duncraft v. Albrecht*, 12 Sim. 189; *Jackson v. Cockle*, 4 Beav. 59; *Humble v. Mitchell*, 11 Ad. & Ell. 206; *Midland v. Great Western Railway Company*, 11 Jurist, 449; *Phenè v. Gillan*, 4 Hare, 1.

Russell and Follett, for the defendant, cited *Humble v. Laystone*, 7 Mee. & Wels. 537.

The Vice-Chancellor. The decree must be, I suppose, the usual decree for specific performance, with something added to this effect:—If the Master should find a good title not shown before the filing of the bill, to state under what circumstances it appears that such title was not shown. [It may be the title was never asked for.] If the Master shall find that the vendor cannot make a good title, then he is to state whether it is by reason of any and what act or acts done by him since the sale by auction, that he cannot make such good title, and what was the nature of such acts generally, and under what circumstances the same took place. Refer it to the Master to inquire whether any and what calls were duly made and how they have been paid, what was their amount, and when and by whom and under what circumstances they were paid. It is difficult to say what the title is in a thing of this sort which the purchaser is to have; the title may be of the simplest and shortest description, but it is difficult to say that he is to have none. Perhaps, under the circumstances of the case, whether wholly caused by the defendant or not, it would be too much to say that the title has been accepted, though probably there has been enough for that purpose. My impression is, that the defendant purchased the shares, then sold them again, and that a transfer has been executed to his nominee, who refused to register, and the question is upon whom the loss is to fall.

Vice-Chancellor Wigram.

*Hunt v. Peacock.* Feb. 22, 1848.

#### UNCLAIMED STOCK.—COMMISSIONERS FOR THE REDUCTION OF THE NATIONAL DEBT.

*Where stock has been transferred to the Commissioners for the reduction of the National Debt, the proper mode of proceeding to obtain a re-transfer is, first, by memorial to the Bank, and, on refusal, then by petition to this court under the provisions of the 56 Geo. 3, c. 60.*

ELIZABETH STACEY, by her will, dated in the year 1801, gave her personal estate to her son William, if he should survive her three years, but if no application should be made by him, the property was to be divided equally between certain persons now represented by the plaintiff. A sum of 300*l.* 3 per cent. annuities was standing in the name of the testatrix at the



time of her death, which happened immediately after the execution of her will. The dividends on this stock were not received by the executors, and at the expiration of ten years the stock was transferred in the usual way to the Commissioners for the reduction of the National Debt. In the year 1842, a memorial was presented to the Bank of England by the plaintiff, stating that she was then adopting the necessary proceedings for re-transfer of the stock, and distribution among herself and the other persons entitled thereto, and praying that the same might not be transferred without notice to her. No further application appears to have been made to the bank; but in November, 1846, the plaintiff filed her bill against Mary Peacock, the legal personal representative of the testatrix, the Commissioners for the reduction of the National Debt, and the Attorney-General, praying a declaration of the plaintiff's title to the stock, and for a transfer.

Mr. Rolt and Mr. Hargrave appeared for the plaintiff.

Mr. Hallett for the defendant Mary Peacock.

Mr. Wray, on behalf of the Commissioners for the reduction of the National Debt and the Attorney-General, contended that the plaintiff had not proceeded in the manner pointed out by the statute of the 56 Geo. 3, c. 60, and that the bill ought to be dismissed with costs.

The Vice-Chancellor, after stating the facts of the case, proceeded as follows:—The commissioners in this case did not demur to the bill, but by their answer submit whether they are properly made defendants, and whether the court will entertain jurisdiction in such a case; but at the same time they submit to act as the court shall direct, on having their costs paid. On the refusal of the bank to re-transfer stock which has been transferred to the commissioners, a summary proceeding is, by the 56 Geo. 3, c. 60, given by petition to this court against the Attorney-General and the commissioners. The bank should adjudicate on proper application being made, but if it does not, then the petition should be presented, and when the petition comes on to be heard the court may either direct an inquiry or may order the petition to stand over and a bill to be filed. My opinion is, that if nothing had been done in the matter the right course would be to proceed by petition. The bill is irregular, but in the way the case now stands, the parties will be far from avoiding trouble by getting rid of these proceedings. The commissioners ought not to have been made parties, and I must dismiss the bill as against them, with costs. As the Attorney-General refuses to disclaim, he must remain before the court, and the suit proceed in the usual way.

#### Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Inhabitants of Macclesfield.*  
Hilary Term, 1848.

ALLOWANCE OF A PARISH INDENTURE BY JUSTICES UNDER THE 56 GEO. 3, c. 139.

*At the trial of an appeal, the respondents, in*

*order to support a settlement by apprenticeship as a parish apprentice, proved an indenture produced from the parish chest of a parish in the county of York, executed by the master, who lived in a parish in the county of Lancaster, and allowed by two justices of the county of York. Proof was given that the pauper served his master as an apprentice for three years. The sessions held that there was not sufficient evidence to raise a presumption of the allowance of the indenture by justices of the county of Lancaster, pursuant to the statute 56 Geo. 3, c. 139, and quashed the order.*

*Held, that the session had come to a right conclusion.*

On appeal against an order of two justices for the removal of Ann Holding, widow of W. Holding, and her four children, from the parish of Macclesfield to the parish of Todmorden and Walsden, in the county of Lancaster, the sessions quashed the order, subject to a case.

The respondents relied upon a settlement gained by W. Holding in the appellant parish by apprenticeship as a parish apprentice, bound by the parish officers of Stansfield, in the West Riding of Yorkshire, with J. Crabtree, who resided in the appellant parish. It was proved that J. Crabtree, before and on the 22nd day of September, 1822, (which was the date of the indenture,) was residing in the appellant parish, and that he continued to reside there for three years afterwards, when he and his family went to America, and had not since been heard of. Ann Holding proved that her husband died in October, 1845, and that she had not seen any indenture of his. No indenture executed by parish officers and allowed by justices, pursuant to the statute 56 Geo. 3, c. 139, was proved so as to raise a presumption of such indenture having been entered and allowed. An order of justices, made for putting out the said W. Holding with the said J. Crabtree, and an indenture of apprenticeship, dated the 12th September, 1822, executed by the master, J. Crabtree, and allowed by two justices of the West Riding, was put in evidence. It was also proved that the order and indenture of apprenticeship were found in the parish chest of Stansfield, and that for several years after the execution of the indenture W. Holding resided with and served J. Crabtree as an apprentice in the appellant township. The court of quarter sessions was of opinion that there was not sufficient evidence of the indenture of apprenticeship having been duly allowed, sub-

\* The 56 Geo. 3, c. 139, by sec. 2, provides, that where a person to whom a parish apprentice is to be bound lives within a different county or jurisdiction from that in which the parish officers binding the apprentice lives, then the indenture must be allowed as well by two justices of the county where the master lives, as by two justices of the county in which the binding parish is situate.

ject to the opinion of this court whether the above evidence was properly admitted and sufficient to raise the presumption that an indenture of apprenticeship had been executed by the parish officers and duly allowed.

• Mr. Hall and Mr. Townsend, in support of the order of sessions. The 5th section of the statute enacts, that no settlement shall be gained by reason of such apprenticeship, unless the indenture has been allowed by justices in the manner specified in the 2nd section. It is true the case finds that there was a service as an apprentice, but that affords no presumption that all the requisites of the statute had been complied with. The indenture was proved to have been allowed by the Yorkshire justices, the persons who first gave their consent, but that does not afford any sufficient presumption that the justices of Lancashire afterwards assented to the binding with a master in that county. In *Regina v. East Stonehouse*,<sup>b</sup> the court refused to presume that the same justices had complied with the requisitions of a later statute because they had complied with the requisitions of a prior one. *Rex v. Mills*.<sup>c</sup>

Mr. Pashley, contra. The case finds that there was an order for the binding, an indenture executed, a formal allowance, and that the apprentice served his master as such. The allowance required to be given by the justices of the county in which the appellant parish is situated will now be presumed by the court. *Rex v. Whiston*,<sup>d</sup> *Rex v. Long Buckby*,<sup>e</sup> and *Rex v. Hinckley*.<sup>f</sup> [Coleridge, J. By the 6th section a penalty is imposed on the overseer and the master, unless the indenture has been allowed by the Lancashire justices.] The court will not presume that these persons have been guilty of an unlawful act. The allowance by one set of justices, and the service under the indenture being proved, the presumption will be that two other persons who were not under any disqualification also gave their consent. *Van Omeron v. Dowick*, *Griffin v. Mason*,<sup>h</sup> *Gully v. The Bishop of Exeter*.<sup>i</sup>

Lord Denman, C.J. In order to make the proof of this indenture sufficient it was necessary to prove an allowance by justices of the counties of York and Lancaster. Evidence was given of an allowance by justices of the county of York, but the quarter sessions thought the evidence offered of the allowance by the justices of the county of Lancaster was insufficient, and accordingly quashed the order. I was much disposed to interfere at the commencement, and to say that the Court of Quarter Sessions was the proper tribunal to draw the conclusion, but we are not willing to send the case back, because a question of law is raised upon it. The question is, whether there is any evidence

which would have compelled that court to have decided contrary to what it has done. We are in fact asked to revise its decision. A strong case was put by my brother Coleridge, that the master would incur a penalty if he took the apprentice without due allowance by the justices; but still I think that, under the circumstances, it would be unreasonable to presume an allowance by the justices of the county of Lancaster. I think, in point of fact, that there was no such allowance, and that there was no evidence to compel the justices to come to that conclusion.

Mr. Justice Patteson. I am of the same opinion. It is rather extraordinary that the allowance upon this part of the indenture was not signed by four justices, but only by two; but still I do not see how the allowance on this part of the indenture by two justices of Yorkshire raises any presumption that the other part was allowed by two justices of Lancashire. The court of quarter sessions has not come to that conclusion, nor do I see that there was sufficient evidence to have made it imperative upon them to come to that conclusion.

Mr. Justice Coleridge. The sessions have received the evidence as relevant to the matter in issue, and they ask us whether they have come to the right conclusion. I am not prepared to say that, if they had decided the other way, I should have thought them wrong. I do not say that there is no evidence. The question is, if the justices of Lancaster have done a particular act. They might have allowed or disallowed the indenture without incurring any penalty. No presumption then is to be drawn either way; but we are asked to presume that the justices of the county of Lancaster have made the allowance because the justices of the county of York have done so. The master and the binding parish officer would have been liable to a penalty if they had bound the apprentice without this allowance, and that is the strength of the case; but it is not so strong as the case of *Regina v. East Stonehouse*, where we refused to draw the presumption that a subsequent act had been done by the same justices, and how can we presume here that the allowance has been made by independent justices?

Mr. Justice Wightman. Admitting that there was some evidence of an allowance by justices of the county of Lancaster, we are asked if there was so much that the court of quarter sessions was bound to come to an opposite conclusion. I cannot say that that court was wrong in its decision, and I should rather have expected that this part of the indenture, which was in the possession of the officers of the parish in Yorkshire out of which the apprentice was bound, would be found to contain the allowance by two justices of the county of Lancaster. As it does not, I should rather presume that no such allowance had been obtained.

Order of sessions confirmed.

<sup>b</sup> 2 New Sess. Cas. 588.    <sup>c</sup> 2 B. & Adol. 578.

<sup>d</sup> 4 Adol. & Ellis, 607.    <sup>e</sup> 7 East, 45.

<sup>f</sup> 12 East, 361.    <sup>g</sup> 2 Camp. 44.

<sup>h</sup> 3 Camp. 7.    <sup>i</sup> 10 B. & C. 584.

## Common Pleas.

*Tunncliffe v. Tedd.* Hilary Term, 1848.

ACTION FOR AN ASSAULT.—HEARING BEFORE JUSTICES.—PLEA IN BAR WITHIN 9 GEO. 4, c. 31.

*The summoning a defendant to answer a charge of assault before justices of the peace, and afterwards upon his appearing pleading not guilty, abandoning the complaint and declining to offer any evidence in support of it, whereupon the justices discharge the defendant, amount to a hearing of the complaint in point of law,*

*Where, therefore, in such a case a defendant had obtained a certificate of the justices, stating that the charge had been heard and dismissed, and pleaded it to a subsequent action for the same assault: Held, that it amounted to a complete bar under the 9 Geo. 4, c. 31, ss. 27 and 28.*

TRESPASS for an assault. The defendant pleaded, first, not guilty, and secondly, a special plea under the 9 Geo. 4, c. 31, s. 27, which stated that he had been brought before two justices of the peace, upon the complaint of the plaintiff, for the same trespass, and thereupon "the justices did then dismiss the said complaint upon the hearing thereof, on the ground that the said alleged trespass had not been proved." The plea then alleged the granting of a certificate to that effect under the said act. To this plea there was a replication stating, "that the said justices did not dismiss the said complaint upon the hearing thereof, on the ground that the said alleged trespass had not been proved *modo et forma*," &c. The trial of the cause took place before Patteson, J., at the summer assizes at Warwick, in 1846, when it appeared in evidence that the plaintiff had gone before a justice of the peace and obtained a summons, which he duly served on the defendant. The next day the defendant accordingly appeared before two justices, and pleaded not guilty, which was then indorsed on the writ of summons. The plaintiff being also present, thereupon stated, that having consulted with his attorney, he would withdraw the complaint, and proceed no further before the justices, but would bring an action for the alleged grievance. Upon that, no evidence being offered by the plaintiff, the justices dismissed the complaint, and the plaintiff paid the consequent costs. Subsequently, upon the defendant's application, the justices granted a certificate under the 9 Geo. 4, c. 31, s. 27, stating that they had heard the complaint of the plaintiff, and that they "deemed the offence not proved, inasmuch as the said complainant did not offer any evidence in support of the said information, and had accordingly dismissed the said complaint." This certificate was produced at the trial, and upon it and the other facts, a verdict had been found for the plaintiff, damages 20*l.*, leave being reserved to the defendant to move to set aside that verdict, and to enter the verdict in his favour on the

second plea. Pursuant to that leave, a rule nisi was accordingly obtained in Michaelmas Term, 1846, and against that rule.

*Humfrey* now showed cause. The question here is, whether there has been a hearing of the charge of assault, so as to make the certificate of the justices a bar to the present action, within the meaning of the 27th & 28th sections of the 9 Geo. 4, c. 31. The 27th section enacts, "that if the justices upon the hearing of any such case of assault shall deem the offence not to be proved, or shall find the assault to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred." Then by the 28th section it is further provided, that "if any person against whom any such complaint shall have been preferred shall have obtained such certificate as aforesaid, he shall be released from all further or other proceedings, civil or criminal, for the same cause." Both these sections, it is submitted, apply only where there has been a hearing on the merits, and not where, as in the present case, the prosecutor declines altogether to proceed. What was done before the justices amounted merely to the withdrawal of a record in this court, and the payment of costs by the plaintiff. The justices heard nothing save the defendant's plea, and therefore could determine nothing, and if so, then there could not have been a hearing within the meaning of the act. *Reg. v. Stamper*, 1 Q. B. 119; *Reg. v. The Recorder of Exeter*, 5 Q. B. 342; *Reg. v. Hastings*, 6 Q. B. 141.

*Whitehurst*, contra. The justices in the present case were both the judges and jury in the matter, and the proceedings must be treated by analogy, not to the course of proceeding in civil actions, but to that in criminal prosecutions. The justices being once in possession of the charge, were bound finally to dispose of it one way or the other, and having done so, there must have been a hearing in point of law. Suppose the defendant had pleaded guilty instead of not guilty, would that not have amounted to a hearing, though no other evidence had been heard? Besides, the certificate of the justices is, it is submitted, conclusive as to there having been a hearing. *Aldridge v. Haines*, 3 B. & Ad. 395.

*Mellor*, on the same side, was not heard.

*Coltman, J.* The present case is analogous to the proceedings on an indictment after it has been found by a grand jury. The party charged in such a case is present for the purpose of being tried upon the indictment, and being so, although he is discharged because no evidence is given against him, yet it cannot be said that he has not been tried. So here, after the party had appeared and pleaded, and witnesses were produced, I see no authority that the prosecutor had to withdraw the charge. The defendant had a direct interest in having the case decided, as strong as that

which the prosecutor had in prosecuting, and therefore, as the parties were present before the magistrate, the case called on, and no evidence being offered, the defendant discharged, I think there has been a hearing of the case in point of law, and that the defendant is entitled to the verdict.

*Maule, J.* The section in question makes the justices a court of oyer and terminer to try the matters brought before them under the act, its meaning being that for trifling assaults a mode of summary criminal proceeding should be provided, which should be a bar to all other subsequent proceedings on the same ground of complaint. The proceeding, therefore, was analogous to that before a court of oyer and terminer, and when the matter was ripe for hearing and called on, the defendant was entitled to have the charge heard and disposed of.

Then if, when the court is ready to hear the case, the prosecutor offers no evidence, and withdraws from the charge, the complaint is not proved, and there follows an acquittal. If it turn out upon the hearing, that the case is of a very grave nature, then by section 29 of the act, a remedy is provided to be applied, at the discretion of the magistrate. This was a criminal proceeding before the justices, and therefore, after the prosecutor had put the matter into the hands of a grand jury or the justices, the defendant had a right to have the matter finally determined, and the prosecutor could not, by withdrawing the charge, deprive him of that right. The rule in civil cases, therefore, did not apply, and the rule in the present case must be made absolute.

*Cresswell, J., and Williams, J., concurred.*  
Rule absolute.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

The previous Sections of this Series of the Digest will be found as follow:—

Registration of Voters' Appeals, pp. 15, 347.  
Law of Attorneys, p. 42.  
Law of Railways, pp. 71, 178.

### Courts of Equity:

Law of Wills, p. 121.  
Construction of Statutes, p. 149.  
Principles of Equity, p. 222.  
Pleading, p. 241.  
Practice, p. 268.  
Costs, p. 197.  
Evidence, p. 299.

### Courts of Common Law:

Construction of Statutes, p. 373.  
Grounds of Actions and Principles, pp. 396, 415.  
Pleading, p. 443.  
Practice, p. 465.  
Evidence, p. 487.

## Common Law Courts.

### EVIDENCE.

#### ACCOUNT STATED.

In August, 1844, defendant gave plaintiff a promissory note for 23l. 2s. 6d., which the note described as being the amount and interest due on a promissory note for 117l. 4s., dated 6th July, 1838, up to 6th July, 1844: *Held*, to be evidence for a jury of an account stated, in August, 1844, of a then subsisting debt of 117l. 4s. *Perry v. Slade*, 8 Q. B. 115.

#### ADMISSIONS BY ATTORNEY.

*Not made in, or for the purpose of, the cause.*—In debt for use and occupation, one of the plaintiff's witnesses, on cross-examination, said that he had heard from the plaintiff's attorney, that there was an agreement in writing: *Held*, that this was no evidence of the existence of an

agreement, so as to render its production by the plaintiff necessary. *Watson v. King*, 3 C. B. 608.

#### AGREEMENT.

1. *Calendar or lunar month.*—In an agreement for the sale of an estate, one per cent. was agreed to be paid if the sale was completed within two months, but only one-half per cent. if not completed within that period. The sale took place within two calendar months, but not within two lunar months.

*Held*, that the word *month*, unless qualified, must be taken to denote lunar month, but that evidence is admissible to show that in the auction trade month means calendar, and not lunar month.

The interpretation of a contract is matter for a judge, but where it is doubtful whether a particular word is used in a sense different from its ordinary meaning, the judge should leave it to the jury to say what sense in that trade ought to be given to the word. *Simpson v. Margitson*, 35 L. O. 172.

2. *Sufficiency of guarantee.*—Evidence is admissible of the facts of a transaction to explain a written agreement. The words "having discounted" may mean a minute, a week, or a year ago, and evidence is admissible to explain which is really meant. *In re Ricketts and James, ex parte Flight*, 35 L. O. 240.

#### ARBITRATION.

*See Set-off.*

#### ATTORNEY'S ADMISSIONS.

*See Admissions.*

#### COMMISSION TO EXAMINE WITNESSES ABROAD.

An order for a commission to examine witnesses abroad under 1 W. 4, c. 22, s. 4, must state "the time, place, and manner of such examination," or a subsequent order must be

made supplying these matters. If an order is defective in these respects, and no subsequent order supplying the deficiency is proved to have been made, the examinations taken under a commission thus irregularly issued cannot be received in evidence. *Greville v. Stulze*, 35 L. O. 338.

#### DEATH.

*Returns of East India Company.*—The returns made to the East India Company admitted as evidence of the death of one of their servants who died at Delhi. *Marks v. Marks*, 35 L. O. 292.

#### DEED.

*Proper custody of.*—A deed more than 30 years old, creating a term to attend the inheritance, was produced from the custody of the plaintiff's attorney. Plaintiff was administrator to the trustee of the term. There was evidence that the attorney had acted for the family of the defendants, who were beneficially interested in the premises to which the deed related, and it was not shown for whom the attorney held the deeds.

*Held*, that there was sufficient *prima facie* evidence of proper custody. *Dod d. Jacobs v. Phillips*, 8 Q. B. 158.

#### FRAUDS, STATUTE OF.

*Delivery to satisfy statute.*—Where a trial takes place in term, one day only of which is left, an application to set aside a nonsuit must be made on that day.

A rule moved for in court in furtherance of a judge's order, need not state it to be drawn up upon reading such order, it is sufficient if the order is attached.

Where *A.* has purchased goods in bond and refuses to allow *B.*, of whom he purchased them, to remove them, this is, in an action by *B.* against *A.* to recover the price of such goods, *prima facie* evidence of a delivery and acceptance sufficient to satisfy the Statute of Frauds. *Danvers v. Kitchingman*, 35 L. O. 372.

#### LETTERS, POSTING.

To prove the sending of a letter by plaintiff to defendant, a clerk to plaintiff deposed that he made up the letters, of which this was one, and placed them in a box in the room where he sat, and that the public postman invariably called every day and took the letters from the box.

*Held*, that such delivery to the postman was evidence for the jury that the letters had gone to the post-office. *Skilbeck v. Garbett*, 7 Q. B. 846.

Case cited in the judgment: *Hetherington v. Kemp*, 4 Camp. 193.

#### OFFICE, ACTING IN EXECUTION OF.

The fact, that a party did a particular act (as signing a land tax assessment) in an official capacity, may be proved, not only by showing that he exercised the office before or at the period in question, but also by evidence (limited to a reasonable time) of his having exercised it afterwards. *Doe d. Hopley v. Young*, 8 Q. B. 63.

#### SET-OFF.

*Arbitration.*—A particular of set-off for 20*l.* 12*s.* 6*d.*, for work done to a house and shop, specified certain items, and then concluded, "and sundry work, nails, &c." At the hearing of a reference of the cause before a legal arbitrator, it was proved that the value of the specified work was 9*l.*, but under the words "Sundry work" the arbitrator (subject to the opinion of this court) admitted evidence of work on the premises to the amount of 10*l.* 1*s.*: *Held*, that this evidence was rightly received by the arbitrator, and that if the plaintiff was in any way misled by the form of the particular, it was for him either to have applied for further particulars, or when before the arbitrator, have asked for an adjournment of the reference, if he wished time to answer the evidence as to the claim. *Eastham v. Tyler*, 35 L. O. 328.

#### STAMP.

1. *Transfer of mortgage.*—*New security.*—*A.* mortgaged land to *B.* for a term of years. *A.* died, leaving the property to his wife for life, remainder to his son in fee. In consideration of the payment of the sum advanced by *B.*, and a further advance, the widow and son joined in mortgaging the property to *C.* for the residue of the term.

*Held*, that *C.*, by this instrument, took a fresh security, and that a deed stamp of 1*l.* 15*s.* was necessary, and that the *ad valorem* duty on the further sum advanced, as required by 3 Geo. 4, c. 117, s. 2, was not sufficient. *Doe dem. Crawley v. Guttridge*, 35 L. O. 327.

2. *Distinct matters in one instrument.*—*Further charge.*—A deed by which a copyhold estate is conveyed to a purchaser, and also a mortgage is secured to a third party as a security for the advance of the purchase money, is not an instrument containing several distinct matters, within the meaning of the 12 Anne, ses. 2, c. 9, s. 24, and therefore, not liable to more than one deed stamp of 1*l.* 15*s.*

A second and subsequent deed, by which the same estate is, by a covenant on the part of the mortgagor, charged as a security to the mortgagee for a further advance of money, is only liable to the proper *ad valorem* duty, being only a further mortgage charge within the meaning of the Stamp Act. *Rushbrooke v. Hood*, 35 L. O. 69.

3. *Deed.*—*Schedule.*—Upon the trial of an interpleader issue, the plaintiff gave in evidence a bill of sale and schedule. The bill of sale assigned to him all the property in a certain house, stating, that "the chief articles thereof were enumerated in the schedule." The schedule was not in any way annexed to the deed: *Held*, that the schedule was admissible in evidence without a stamp; the deed being sensible without the schedule. *Dyer v. Green*, 34 L. O. 525.

#### WITNESS.

*Privilege from arrest.*—A witness arrested on his way to the Court of Bankruptcy, by virtue of a warrant issued under the Small Debts Act, is entitled to be discharged from custody. *In re Irwin, Ex parte Hamer*, 35 L. O. 197.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 25, 1848.

‘ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

### FEES IN COURTS OF LAW AND EQUITY.

THE Accountant-General's return, published in a recent number,\* shows a receipt of fees in the Court of Chancery, amounting during the past year to no less a sum than 137,293*l*. This somewhat startling amount, exclusive of upwards of 70,000*l*. a year from the Suitors' Fund, has been drawn from persons struggling for rights the enjoyment of which it is the duty of the government to ensure to every one of its subjects. There is not one of the fees that constitutes this very large sum that is not a reproach to the government, that does not in fact establish the great difference between its practice and its pretensions.

Every subject of the realm is, it is said, bound to pay taxes, because property acquires its greatest value from the protection afforded to it by the administration of the law, and because that protection is afforded by the government. This is the theory of our law and government. But the subject never requires the exertion of the protective powers of the government without being called on to pay for them specifically, and, we regret to be obliged to add, expensively.

Practically, therefore, it would seem, that the tribunals did not exist for the whole kingdom, but were created specially at the moment for the benefit of the individual suitor. He is in the situation of a man who should buy a carriage and horses, establish a place to keep them in, and servants to take care of

them and to drive them, but who should find himself called upon to pay a fare every time he used them. In the case of the private individual, such a demand on his purse would probably make him give up the carriage and horses. But the subject cannot give up the courts and their judges and officers. There they are, and there the government insists that they shall be. And why? Let us take the most favourable answer that the government can give to this question, and, (putting out of view all reasons of dignity, power, and patronage,) suppose it to say—the courts are maintained because no one can foresee the time when he may need their aid, and the government must provide for even the possible wants of every subject of the Crown. Exactly so, and that is just the reason why no individual should pay fees when his wants compel him to enter one of these courts. The answer shows that they are kept up for the whole community, not for the individual suitor. And that such is the real effect of the answer is evidenced by something else. It is said that all the property in the kingdom which does not come into litigation receives a value from that litigation which the rest is subjected. The statement is true, but it proves decisively that Mr. A., who never practically knew what a lawsuit was, obtains all the benefit of one from the fact that Mr. Z. has been compelled to undergo its troubles. Mr. A. therefore gets the full advantage of the existence of the courts from Mr. Z.'s misfortune. Surely this is a good reason why the expense of maintaining the courts should be borne justly and

\* See page 457, *ante*.

equally by Mr. A. and Mr. Z., and should not be thrown exclusively on the latter.

But old practice is against this view of the question, and old practice is allowed in this instance to overbear reason, truth, and justice. In a former paper<sup>b</sup> we stated what was the origin of that practice, and one less creditable could hardly have existed. Its ordinary results are worthy of its origin. Fees have been created to make the necessities of suitors subserve the purposes of patronage, and useless forms are multiplied to give a pretence for fees. Men are for ever being drawn round this vicious circle of annoying and vexatious cause and effect, in which one evil produces another which reproduces the first, till the awful phrase of Milton is almost literally verified. Let us take a part of the evidence in proof of this statement.

Mr. Field, pp. 26, 27, of the "Evidence on Fees in Courts Law and Equity," says, "I think the mode of collecting numerous fees is objectionable. I will give an instance of one office. In case an order is made to-day by the Lord Chancellor, and I have to draw that order up, I must go to the registrar; he will first give me a rough minute of the order; he will charge me for that minute, varying perhaps from a few shillings up to a pound. I have then to go to him, when the rough minute is made more perfect, and get it copied out in the shape of a more formal order. For that I must pay another fee. And when that formal order is drawn up and signed by him, I have to enter it with the entering registrar, and I have to pay another fee for entry. Now all those fees really are paid upon one single document, which is not completed till I have paid the last of them, and it is very obvious that nothing would be so easy as to receive all those fees upon one occasion." Simple-minded Mr. Field. "Nothing would be so easy,"—no doubt,—but the ease of the business is the last thing that would recommend it. The trouble gives the pretext for the fee: the fee could not well be demanded without it. If A. received at once all the fees payable to himself and to B. and C., and did at once all the work now pretended to be done by B. and C., there would be a direct call for the inquiry, where is the necessity for paying anything to B. and C.? And such an inquiry would be formidable. It would be very difficult to answer and quite impossible to evade.

The appearance of labour must be kept up that the demand of fees may have the semblance of justification. For this purpose the solicitor must be put to some unnecessary trouble, and the client burdened with much unnecessary expense. The trouble is not undergone without cost. The solicitor must charge for time though that time is wasted, and for labour though that labour is useless. This is not his fault but his<sup>a</sup> misfortune. The bill of costs is thus swelled by sums which both solicitor and client feel to have been uselessly and needlessly drawn up from the client's pocket for mere empty formalities, while the skill and labour of the solicitor are left comparatively uncompensated. Processes which serve no purpose, forms, the use of which it would puzzle the most skilful and intelligent man to imagine, are heaped on each other;—time is wasted and delay is occasioned for no other end than to simulate a justification for the creation of those fees of office which ought never to have been invented, and which it is to be hoped will not long be suffered to continue. The removal of them would in fact be the simplifying of the process of the court. More time might be given to the consideration of the real merits of the case, if these absurd formalities were abolished, and the solicitor's bill would not be swelled by items which neither bring him credit nor profit in the discharge of his professional duties.

These objections to the system of payment of fees are strong enough. They affect the title to demand them. They show abuses of process attributable only to the desire to exact fees, and they prove the existence of evils which fairness and justice imperatively require the government to remove.

But what is the effect of these fees upon the practice of the officers in another way. This inquiry opens up some evidence of a strange, rather than of a satisfactory kind, for it appears that not only is necessary business, as described by Mr. Field, subdivided into many unnecessary details, but copies of documents are actually charged for, though neither wanted nor made.

Mr. McLeod, a solicitor in considerable practice, tells us that there are demands made on the pocket of the client for papers not really required in the progress of a suit, sometimes too not really furnished, but always really paid for. In page 88 of the evidence, Mr. McLeod is asked, "Is copy money ever paid to your knowledge without copies being made?" He answers that it is, and then the following examination

<sup>b</sup> Page 456, *ante*.



takes place. "I hold a bill in my hand amounting to 804*l.*, in one suit, which I paid to one Master's Office." "For copy money?" "Yes, not one of which copies has been made. But this sum was not all paid for copies. The Master's bill contains charges for warrants and reports." "What is that which was copied?" "The Master charges for two copies of the report. One was made, and that is the only copy of a document made in this paper, except the transcript of the report. They were my own papers on the part of the plaintiff, and then the Master's clerk charges me with these supposed copies on the part of the defendant, *which I did not want and which I never had.*"

We need not pursue this examination further at present, for we shall again and again return to this subject. This single extract will serve to show that official fees may be cruelly unjust because wholly useless. There can be no conceivable reason why men should be charged for what they do not want and what they do not have. The needless accumulation of expense is not merely an error, but a wrong and a sin: it is in fact a legalized robbery, so much the worse than a highway robbery, because, while it is in direct contradiction to the spirit of justice, it assumes its form and abuses its powers, and, by means of that very abuse, prevents the energy and courage of the suitor from even hoping for a chance of successful resistance. We know that some weak-minded men have a fancy that costs ought to be multiplied in order to prevent people from "indulging in litigation!" The persons to whom litigation is an indulgence are few, and those few are of a sort that no multiplication of costs will check. The poverty of Scott's Peter Peebles did not prevent him from being a perpetual suitor, nor in our day did costs bar from the enjoyment of litigation Charles Pitt, whose appearance was familiar to every

practitioner in every court at Westminster, and who was the real living representative of Scott's masterly fiction. Such persons will be found in all communities, as other monomaniacs will, but the state that legislates for all, on the sole principle of preventing the follies of such persons, and that debars millions from the means of enforcing their just rights because one or two units may abuse those means, almost deserves to be treated as equally monomaniac with them.

But in truth the demand of fees, and especially of these fees for unnecessary labour or for labour never performed, cannot set up even the absurd pretence we have just noticed. The real origin of these fees of court is to be found in the abuse of power; their real purpose that of providing for the great or their dependants. In early times the work, not now done at all, was done by half-starved subordinates, while the great recipient of the fees was the hanger-on of some powerful family, or a member of that family itself. For this reason it is, as we shall show on a future occasion, that the useless receivers of fees were paid more largely than those who actually laboured in office. The courts offered facilities for extracting money from the pockets of the subject—the temptation was great—the return certain—the danger of opposition indefinitely small, and thus from age to age has gone on a system, for the existence of which no good reason could be given, and which was itself a wrong on the part of the government, but the individual sufferers from which were not united and powerful enough to obtain justice. Their own weakness is now assisted by public opinion: the interests of the whole community and those of a powerful profession are inseparably united in the demand for a redress of this long tolerated injustice, and no efforts must be spared till it has passed into the catalogue of "things that were."

The following is extracted from the Annual Return of the Accountant-General of the Court of Chancery, of the payments made by him out of the Suitors' Fund, from October 1846, to October 1847.\*

|  | £      | s. | d. | £             | s.        | d.       |
|--|--------|----|----|---------------|-----------|----------|
| Paid Lord Chancellor's salary . . . . .  | -      | -  | -  | 9,744         | 15        | 10       |
| — Vice-Chancellor Bruce . . . . .  | -      | -  | -  | 4,872         | 7         | 11       |
| — Vice-Chancellor Wigram . . . . .   | -      | -  | -  | 4,872         | 7         | 11       |
| — Ten Masters' salaries, at 2,500 <i>l.</i> per annum (inclusive of the proportional part of one Master's salary, retired, since dead, . . . . . | 25,702 | 10 | 3  |               |           |          |
| — Accountant-General's salary as Master . . . . .  | 582    | 10 | 0  |               |           |          |
| — Proportion of pension to a retired Master of 1,200 <i>l.</i> per annum, since dead . . . . .   | 404    | 10 | 1  |               |           |          |
| <b>Total Masters . . . . .</b>   |        |    |    | <b>26,689</b> | <b>10</b> | <b>4</b> |

|   | £     | s. | d. | £      | s.       | d. |    |
|---|-------|----|----|--------|----------|----|----|
| Paid Accountant-General's salary . . . . .  | 875   | 15 | 0  |        |          |    |    |
| — Expenses of office, office-keeper, rates, stationery, &c. . . . .   | 437   | 17 | 8  |        |          |    |    |
| — Twenty-six Clerks' salaries . . . . .   | 6,733 | 11 | 3  |        |          |    |    |
| — Proportion of pension to a retired Clerk of 450 <i>l.</i> per annum . . . . .   | 80    | 8  | 3  |        |          |    |    |
| Total Accountant-General's office . . . . .   |       |    |    | 8,127  | 12       | 2  |    |
| — Two Examiners' salaries (in part), remainder being charged on the Suitors' Fee Fund . . . . .   | 584   | 17 | 0  |        |          |    |    |
| — Retired Examiner's Pension . . . . .  | 194   | 19 | 0  |        |          |    |    |
| — Retired Examiner's Clerk's Pension . . . . .  | 97    | 9  | 6  |        |          |    |    |
| Total Examiners . . . . .   |       |    |    | 877    | 5        | 6  |    |
| — Clerk of Affidavit's increased salary . . . . .   |       |    |    | 291    | 5        | 6  |    |
| — Four Clerks in Clerks of Entries' office . . . . .  |       |    |    | 365    | 7        | 7  |    |
| — Officers of the Lord Chancellor's Court :   |       |    |    |        |          |    |    |
| Usher . . . . .   | 292   | 8  | 6  |        |          |    |    |
| Court-keeper . . . . .  | 87    | 14 | 8  |        |          |    |    |
| Persons to keep order . . . . .   | 138   | 14 | 1  |        |          |    |    |
| Tipstaff . . . . .  | 123   | 16 | 0  |        |          |    |    |
| Serjeant-at-Arms . . . . .  | 555   | 8  | 9  |        |          |    |    |
| — Officers of the Vice-Chancellor of England :  |       |    |    |        |          |    |    |
| Secretary . . . . .   | 487   | 3  | 8  |        |          |    |    |
| Usher . . . . .   | 194   | 17 | 6  |        |          |    |    |
| Trainbearer . . . . .   | 97    | 8  | 9  |        |          |    |    |
| — Officers of the Vice-Chancellor Bruce :   |       |    |    |        |          |    |    |
| Secretary (two years' salary) . . . . .   | 592   | 6  | 11 |        |          |    |    |
| Usher . . . . .   | 194   | 17 | 11 |        |          |    |    |
| Trainbearer . . . . .   | 97    | 9  | 0  |        |          |    |    |
| Court-keeper . . . . .  | 77    | 19 | 2  |        |          |    |    |
| — Officers of Vice-Chancellor Wigram :  |       |    |    |        |          |    |    |
| Secretary . . . . .   | 292   | 6  | 11 |        |          |    |    |
| Usher . . . . .   | 194   | 17 | 11 |        |          |    |    |
| Trainbearer . . . . .   | 97    | 9  | 0  |        |          |    |    |
| Court-keepers . . . . .   | 77    | 19 | 2  |        |          |    |    |
| Total Officers of the Courts . . . . .  |       |    |    | 3,602  | 17       | 11 |    |
| — Surveyor . . . . .  | -     | -  | -  |        | 116      | 10 | 0  |
| — Compensations to the late Officers of the Court of Exchequer . . . . .  | -     | -  | -  |        | 5,876    | 8  | 11 |
| — Solicitor to the Suitors, in lieu of Costs . . . . .  | 600   | 0  | 0  |        |          |    |    |
| Disbursements . . . . .   | 45    | 18 | 5  |        |          |    |    |
|   |       |    |    |        | 645      | 18 | 5  |
| — Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices, for repairs, rates, stationery, coals, candles, servants' wages, &c. . . . . | -     | -  | -  |        | 4,262    | 7  | 4  |
| — Carried over to Suitors' Fee Fund (by order of Court) . . . . .   | -     | -  | -  |        | 15       | 15 | 3  |
| Total Payments . . . . .  |       |    |    | 70,360 | 10       | 7  |    |
| Surplus Interest invested . . . . .   |       |    |    | 30,000 | 0        | 0  |    |
|   |       |    |    |        | £100,360 | 10 | 7  |

To this sum of . . . . . £ 70,360 10 7

Must be added the Fees received and paid into the Suitors' Fee Fund, the amounts of which were given at p. 457, *ante* 137,293 17 7

207,654 8 2

\* These payments out of the *Suitors' Fund* are exclusive of the payments to the *Fee Fund*, stated, p. 457, *ante*.

### GAME CERTIFICATE BILL.

THIS is a bill to enable occupiers of land, having a right to kill hares on that land, to do so, by themselves or persons authorized by them, without being required to take out a game certificate.

It recites the 48 Geo. 3, c. 55 : 52 Geo. 3, c. 93, and 3 & 4 Vict. c. 17, and that by divers laws now in force penalties are imposed on all

persons taking or killing, or in assisting in the taking or killing of, amongst other things, any game whatever, who shall not have obtained a certificate of the due payment of such duties :

And that it has been found that much damage has been and is continually done by hares to the produce of inclosed lands, and that great losses have thereby accrued and do accrue to the occupiers of such lands, and it is expedient that persons in the actual occupation of such

lands should be allowed to take, kill and destroy hares thereon without the payment of the said duties of assessed taxes, and without the incurring of any of the penalties above-mentioned; it is therefore proposed to enact;

1. Persons in the occupation of inclosed grounds may kill hares without a game certificate.

2. Persons employed not liable to duty as gamekeepers.

3. Not to extend to coursing or hunting.

4. Not to authorize the laying of poison.

5. Agreements reserving game to be still in force.

6. Future agreements not to extend to hares, unless specially included.

7. Hares may be sold to licensed dealers in game. 1 & 2 Will. 4, c. 32.

### PETTY BAG OFFICE BILL.

THIS is a bill to abolish certain offices in the Office of the Petty Bag of the High Court of Chancery, and to provide for the transaction of the business of the office. The proposed enactments are as follow :-

1. One clerk of the petty bag to be appointed. All other officers in the petty bag to be discontinued.

2. Appointment of the first clerk. The Master of the Rolls to appoint his successors.

3. That all powers, authorities and privileges which before the passing of this act were lawfully vested in the clerks of the petty bag, or any of them, shall be and are (except so far as the same are hereby taken away or altered) vested in the clerk of the petty bag hereby appointed or hereafter to be appointed under this act, and that all acts, duties and services by him performed in execution of such powers and authorities shall be in all respects valid in the law.

4. A seal of office to be provided.

5. Punishment for forging the seal.

6. Power for clerk to appoint a deputy in case of sickness or other unavoidable cause.

7. But he is not to act as solicitor, or attorney or agent, &c.

8. The clerk is to receive a salary.

9. The clerk of the petty bag may appoint to assist him such clerk or clerks as the Master of the Rolls may appoint: to be paid by salary.

10. Salaries and expenses to be paid out of Suitors' Fund.

11. Penalty for taking gratuities, &c.

12. Provision for the transfer of business.

13. Specifications of patents not to be enrolled in the petty bag.

14. Master of the Rolls to fix a table of fees. To be deemed lawful, if first approved by the Lord Chancellor.

15. Accounts to be kept. Receipts to be paid into Suitors' Fee Fund.

16. That all persons admitted to practise as solicitors in the High Court of Chancery, or as attorneys in any of her Majesty's Courts of Common Law at Westminster, shall be allowed

to sue out writs and processes in the said office of the petty bag, upon payment, nevertheless, of such fees in respect of the business transacted by such attorneys therein as shall be fixed and established in manner aforesaid.

17. Master of the Rolls may make orders for custody and regulation of the records.

18. That all such acts, duties, and services as are now or heretofore have been done, performed and rendered by the clerks of the petty bag, or any of them, as attorneys or attorney for parties suing out writs, commissions, or processes, or in the preparation of pleadings or other documents, shall and may be done, performed, and rendered by attorneys duly admitted in any of her Majesty's Superior Courts of Common Law, or solicitors duly admitted in the High Court of Chancery; and such writs and processes, pleadings and documents, shall be sued out and prepared in such and like manner as business of the like description is now conducted in the Courts of Common Law at Westminster.

19. That all writs of *scire facias* heretofore issued out of the said High Court of Chancery, by means of the clerks of the petty bag, shall be made returnable in such one of her Majesty's Courts of Common Law at Westminster, as the party suing out the same shall please, and the same, together with all other writs, except writs of summons and writs of election, issued on the calling of a new parliament, and writs of restitution issued on the appointments of archbishops and bishops, heretofore issued under the Great Seal of Great Britain or otherwise, by the clerks of the petty bag, or which shall be rendered necessary under the provisions of this act, shall and may be made out and engrossed by the attorneys or solicitors for the parties requiring the same, and shall be sealed with the said seal, to be provided as aforesaid, on payment of such fee as shall be settled as aforesaid, on producing the same at the office of the petty bag and lodging a precipe containing particulars of the same, in like manner as writs are now issued from the Courts of Common Law at Westminster.

20. That on the traverse of an inquisition the traverse shall be prepared and engrossed by the attorney or solicitor of the party prosecuting the same, and shall be sent by writ of *mittimus*, to be issued by the clerk of the petty bag to one of her Majesty's Courts of Common Law at Westminster, and that upon the return of such writ or commission as aforesaid, or the filing of such traverse with the Master of such Court of Common Law, such further proceedings may be had thereon as shall be necessary to give full and legal effect to any such writ, commission, or traverse.

21. Forms of writs to be settled by the Master of the Rolls.

22. Courts of Common Law to take cognizance of writs,

23. Office copies may be filed of judgments which require for their full execution any act to be done by Lord Chancellor or Master of the Rolls (such as calling in patents to be can-

celled, or vacating records); and orders of the Lord Chancellor or Master of the Rolls may then be made thereon.

24. That from and after the *passing of this act* no writ or plea of privilege to sue or be sued in the office of the petty bag shall be allowed to any person or persons whomsoever, and that all persons now by law entitled to any such privilege, shall sue and be sued in the same courts and in like manner as others of her Majesty's subjects not having such privilege, and no writ shall be issued for or against any officer of the High Court of Chancery out of the said office of petty bag.

25. Monies paid into court for her Majesty's use, shall continue to be received as heretofore, &c.

26. Compensations.

27. Power to make orders.

### FIRST REPORT FROM THE SELECT COMMITTEE ON RAILWAYS.

THE Select Committee appointed on the Railway Bills of this Session, who were empowered to Report their opinion from time to time to the house;—Have made progress in the consideration of the matters referred to them, and have agreed to the following resolutions;—

1. That the amount of capital proposed to be raised by the railway bills of the present session is not so great as to render it expedient that any general measure should be adopted for interfering with the progress of such bills in their ordinary course, beyond a careful and strict investigation by the committee on the points hereafter specified.

2. That the attention of the committee to whom the various railway bills shall be referred, be specially called to the necessity of strictly enforcing, with regard to such bills, the standing orders which were adopted by the House of Commons in the last session of parliament, on the recommendation of the committee on railway bills, viz., with respect to the new bills of this session, the standing orders, Nos. 124, 125, 126, 127, 128, 129, 130; and with respect to suspended bills, the two standing orders which follow the above orders; and that in each case (whether the bill be a new or suspended bill) they make a special inquiry into the sufficiency and *bonâ fide* character of the subscription contract, and report their opinion thereupon to the house.

3. That the standing orders relating to suspended bills be rescinded, so far as they shorten the period required between the second reading of the bill and the sitting of the committee thereon; also so far as they would prevent the committee from receiving evidence and hearing parties with reference to the sufficiency and *bonâ fide* character of the subscription contract; and lastly, so far as they dispense with the further consideration of the report previously to the engrossment of the bill.

4. That seven clear days shall in all cases

intervene between the report of a railway bill and the further consideration of such report; and that on the further consideration of such report, the chairman of ways and means shall acquaint the house whether the bill contains the necessary provisions for carrying into effect the standing orders specified in the second resolution.

13th March, 1848.

### PROCEEDINGS FOR THE REPEAL OF THE CERTIFICATE DUTY.

ALTHOUGH not precisely in order of date, we shall commence our report of the proceedings adopted during the past week for the repeal of the certificate duty, with the great meeting of the profession which took place in the Hall of the Incorporated Law Society, on Wednesday last, the 22nd instant. Our readers are aware that the meeting consisted not only of the members of that society, but of the rest of the attorneys and solicitors practising in the metropolis. Measures were taken to ascertain that those only were present who were entitled to attend. The signature of each person was taken as he passed through the outer hall, and no less than 375 names were thus subscribed. Many of the members of the society, and perhaps others, passed in without so subscribing, and the meeting, no doubt, consisted of nearly 500,—a large assemblage of professional men, amidst their various avocations.

At one o'clock precisely it was moved that Mr. *Ranken*, the President of the society, should take the chair, to which he kindly acceded, and stated the purpose for which the meeting was convened, namely, to consider what steps should be taken to obtain a remission of the annual certificate duty on attorneys and solicitors. He explained that the members of the council attended there as members of the profession, and not in their official capacity. They had been requested by a considerable number of their brethren to convene this meeting, and they had felt bound to lend their assistance to an object which appeared to be just and proper.

Few public meetings take place without some controversy either on matters of form or substance. Amongst lawyers in particular it might be anticipated that if there were any peg on which to hang an objection, it would be sure to be seized hold of, and so it was in the present instance. Mr. *Ripley*, one of the members of the society, protested against the regularity of the meeting upon

a peculiar construction which he put upon some of the bye-laws; but as this was not a meeting of the society, but of the profession at large, who were permitted to assemble on that occasion in the society's hall, the objection was overruled.

The first of the resolutions, which will be hereafter stated, was moved by Mr. *Wing*, who went over the several grounds upon which the taxes upon attorneys and solicitors are condemned as partial, unequal, and unjust. The course they had to pursue was to bring before government the injustice of the imposition. They might not press in the present state of public affairs for an immediate relief, but it was easy to devise some means by which the tax might be taken off a profession which was necessary and beneficial to the community, although for the misconduct of a few it was the fashion to revile the whole.

This resolution was seconded by Mr. *Kinderley*.

Mr. *Austen*, the Vice-President, answered the misapprehension which one of the members had stated to the meeting regarding the interview with the Chancellor of the Exchequer, and the supposed indecorum of hastily proceeding to introduce a bill into parliament in opposition to the government at a time of peculiar difficulty. There had been no undue haste. The interview took place nearly a month ago, and every respect would be paid to the authorities in reference to the time of proposing the bill.

Amongst other speakers, Mr. *Burchell*, the Under-sheriff of Middlesex, and the legal adviser of the Board of Income Tax Commissioners, addressed the meeting. His knowledge regarding the state of the profession in his district, enabled him fully to appreciate the hardship and ill consequences of this impost, which formed a second income tax, and he strongly testified to the extreme injustice and severity of this unequal impost.

On the supposition that the taxes on the profession might be considered by the legislature as a protection to the public against the entrance or continuance of improper members therein, a resolution was moved by Mr. *Crowder* and seconded by Mr. *Field*, that the income tax derived from that source ought, in the opinion of the meeting, to be applied in making adequate and public provision for the education on an improved system of the rising generation of the profession, and should not be applied to the ordinary fiscal purposes of the state. This proposition was considered by a large ma-

jority of the meeting as inconsistent with their present objects, which were confined to the repeal of the annual certificate duty. The grounds of this motion were very ably discussed, but ultimately the proposed resolution was withdrawn.

It may be important to observe, that although the promoters of the meeting thus gave way to the objection, which we have stated, the proposition itself shows, that the leading members of the Incorporated Society are desirous, not only of relieving their brethren from this unjust burthen, but of effecting the educational improvement of the future members of the profession. It appears to have been assumed at the meeting, that if this resolution were passed, the Certificate Duty might be retained, subject to its bearing the expenses of an improved system of legal education. But we understand that the proposers of this improvement intended that such expenses should be borne out of the money received on articles of clerkship, and it is remarkable, that in Ireland a return is made by the Stamp Office of a considerable proportion of the duties received on attorneys' indentures. By a parliamentary return (printed 18 L. O. 247), it appears that the Society of the King's Inn in Dublin receives, on the average, upwards of 2,000*l.* a-year from these stamp duties.<sup>a</sup> If a like proportion were paid out of the duties received in England and Wales, it would produce at least 12,000*l.* a-year, sufficient, as well for educational purposes, as for the relief of a large part of that distress which must unavoidably fall on the aged and infirm members of every profession. The decision of the meeting was probably right; but we trust that the important object of securing not only the legal but the general education of the future men of this branch of the profession, will be followed up by those who evidently see its importance, and are able to urge it forward.

Mr. *Field*, in the course of his address, strongly observed upon the fallacy of supposing that the certificate duty operated as a restraint upon mal-practice, for it was evident from recent trials at the Central Criminal Court that there were many pirates in the profession sailing under the colour of one certificate, and levying contributions upon the public by their iniquitous proceedings.

The income of attorneys and solicitors, derived from severe mental application, dependent on the health of the individual, and

consequently of precarious tenure, was noticed in a resolution proposed by *Mr. Keith Barnes*, and seconded by *Mr. Rd. B. Armstrong*, who contended that, instead of paying a greater tax than others, the taxes on professional incomes should be levied in proportion to their uncertain duration. This resolution was carried unanimously.

An extraordinary rider to one of the resolutions was proposed and seconded, which rider, as the chairman observed, was longer than all the proposed resolutions put together. It consisted of an elaborate exordium, and no less than seven resolutions, part of which excited the merriment as well as the opposition of the meeting, but as the rider was ultimately withdrawn in deference to the almost universal request of the meeting, we deem it unnecessary to set it forth. This and other occasional interruptions which took place in the regular business of the meeting, were forcibly commented upon, and opposed by *Mr. Southee*, *Mr. Concanen*, and other members of the society. At length, on the motion of *Mr. Currie*, seconded by *Mr. Coverdale*, a petition to both Houses of Parliament was approved, and the charge of it confided to the council of the Incorporated Society.

Since our list of petitions to the House of Commons in the course of last week, (see page 475, *ante*.) 24 petitions have been presented from various other places, viz :—

|                  |               |
|------------------|---------------|
| Birmingham.      | Ludlow.       |
| Bodmin.          | Otley.        |
| Bromsgrave.      | Ringwood.     |
| Cirencester.     | Sandwich.     |
| Cleveland.       | Sarum, New.   |
| Credition.       | Sleaford.     |
| Darlaston.       | Stroud.       |
| Dover            | Sunderland.   |
| Glamford Briggs. | Sutton, Long. |
| Grantham.        | Tewkesbury.   |
| Holbeach.        | Wednesbury.   |
| Leeds.           | Wiveliscombe. |

Petitions have been presented from 132 places.

In addition to the list of members who had presented petitions at the time of our last publication, we are glad to give a further muster-roll, making in all 62 members of parliament to whom the charge of petitions has been confided. Copies of petitions and statements in favour of repeal, have also been sent to various other members, so that a large part of the house is now in possession of the merits of the case. The names of the members are as follow :—

|                           |                            |
|---------------------------|----------------------------|
| <i>Mr. Beckett.</i>       | <i>Mr. Rice.</i>           |
| <i>Mr. Bonham Carter.</i> | <i>Col. Salway.</i>        |
| <i>Mr. Cripps.</i>        | <i>Sir Wm. Somerville.</i> |
| <i>Mr. H. Hope.</i>       | <i>Mr. Stansfield.</i>     |
| <i>Mr. Flutt.</i>         | <i>Mr. Stanton.</i>        |
| <i>Viscount Ingestre.</i> | <i>Sir J. Trollope.</i>    |
| <i>Mr. Kershaw.</i>       | <i>Mr. Welby.</i>          |
| <i>Mr. John Martin.</i>   | <i>Mr. Wyld.</i>           |
| <i>Captain Pechell.</i>   |                            |

The following are the resolutions passed at the meeting above referred to :—

It was moved by *Mr. Wing*, seconded by *Mr. Kinderley*, and resolved,

“ 1. That the profession of attorneys and solicitors is unjustly taxed towards the exigencies of the State, and that the payment of the duty of 120*l.* on their Articles of Clerkship, and 25*l.* on their admission, (equivalent on the average of lives to the annual payment of 9*l.* and upwards) and the Annual Certificate Duty of 12*l.* and 8*l.*, besides the Income Tax of three per cent., paid by them in common with the rest of the community (making altogether an Income Tax of 10*l.* per cent. on the average of their professional services,) is unjust and oppressive.”

It was moved by *Mr. Barnes*, seconded by *Mr. Armstrong*, and resolved,

“ 2. That as the income of attorneys and solicitors is derived from severe mental application, is dependent on health, and is consequently of a precarious tenure, instead of paying a greater tax than others, the taxes on their professional incomes should be in proportion to such tenure.”

It was moved by *Mr. Currie*, seconded by *Mr. Coverdale*, and resolved,

“ 3. That the foregoing resolutions be signed by the chairman, and advertised in the daily papers, and that the petition founded thereon and now read, be presented to both houses of parliament, and that the council of the Incorporated Law Society be requested to take the charge of such petition.”

The following is the petition :—

“ To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

“ The humble Petition of the undersigned Attorneys and Solicitors practising in the Courts of Law and Equity in the Metropolis, agreed to at a Public Meeting of the Profession, held at the Hall of the Incorporated Law Society, Chancery Lane, the 22nd day of March, 1848.

“ Sheweth, That your petitioners, and the other attorneys and solicitors practising in the courts of law and equity in the united kingdom, are unjustly taxed towards the exigencies of the state, inasmuch as in addition to the ordinary taxes paid by the other classes of the community, each of your petitioners, on being articulated to his profession, has been compelled to pay the sum of 120*l.* for the stamp on his

articles of clerkship, and on his admission to practise the further sum of 25*l.*, and after his admission and during the whole of his professional life he has to pay for certificate duty the annual sum of 12*l.* when he carries on business within the limits of the London District Post Office, and the annual sum of 8*l.* when his practice is beyond those limits.

"That the members of the Bar do not pay any duty to the government on commencing their course of study, and they only pay 50*l.* on their admission.

"That the members of the medical profession, on commencing their course of study, pay a duty which averages about 6*l.* each, and that no admission duty is imposed on them.

"That the duty on the articles of clerkship and on the admission of an attorney and solicitor is on the average of lives equivalent to an annual payment to the government by each individual of 9*l.* 7*s.* 10*d.*

"That the average professional incomes of attorneys and solicitors does not exceed the sum of 300*l.*, and the annual certificate duty amounts, in cases of country practitioners, to nearly 3*l.*, and of London practitioners, to 4*l.* per cent. income tax.

"That these several taxes being added to the general property tax of 3 per cent., imposed on them in common with the rest of their fellow subjects, make a per centage of 10*l.* and upwards on the average of their professional incomes.

"That your petitioners' income is derived from severe mental application, is dependent on health, and is consequently of a precarious tenure, and your petitioners submit that, instead of paying a greater tax than others, the tax on their professional incomes should be in proportion to such tenure.

"That your petitioners are willing to bear, and will cheerfully pay their full share of the burthens of the country, but they justly feel aggrieved by the present system of partial and exclusive taxation.

"Your petitioners therefore humbly pray your Honourable House that you will be pleased to remit the annual certificate duty payable by attorneys and solicitors, or that if it should appear to the legislature that the maintenance of such tax would be beneficial to the public by insuring increased respectability of the profession, the same may be devoted solely to the improvement of the profession by the establishment of an improved system of legal education, or that your Honourable House will be pleased to grant such other relief as to your wisdom and justice may seem meet.

And your petitioners will ever pray, &c.

Besides the "running commentary" which we have given on the speeches, we shall add the details collated with various reports in the public press.

## MEETING OF ATTORNEYS AND SOLICITORS FOR THE REPEAL OF THE CERTIFICATE DUTY.

ONE of the most numerous meetings of attorneys and solicitors ever before seen in the metropolis, and convened by the Council of the Law Society, was held on the 22nd inst., in the Society's Hall, Chancery Lane, for the purpose of adopting measures to obtain a remission of the Annual Certificate Duty. The great hall was crowded to excess. Mr. Charles Ranken was called to the chair, and the notice convening the meeting having been read,

The *Chairman* said, he wished it to be understood, that although the meeting assembled in that hall, by permission of the Council of the Society, yet it was a meeting of the profession generally, and in no other way an act of the society. He was there not as president of the society, but as chairman of that meeting.

Mr. Ripley complained that sufficient notice had not been given of the meeting. He thought that for any meeting called in that hall, the same notice ought to be given as would be required for the meeting of the society itself. He understood that 24 hours' notice had been given to the Chancellor of the Exchequer to abandon the Certificate Duty, and he having declined to do so, a bill had been prepared, which it was intended to endeavour to carry, in opposition to the government. He thought that the council of that society was taking them by surprise, and that if they did not insist upon the 10 days' notice of meeting being given, as required by the bye-laws of the Institution, it would lead to all manner of irregularities in the management.

The *Chairman* stated, that that was not a meeting of the society at all, but a meeting of the profession generally, a certain number of whom had asked the council of the society to lend them the hall to hold the meeting in.

Mr. Ripley persisted in proceeding with his argument, when

Mr. Crowder thought the last speaker was irregular, and out of order, in indulging in an attack of this sort on the council of the society. It was well understood that this was not a meeting of the society, but of the profession generally, called together for purposes altogether distinct from the purposes of the society; and, therefore, he thought the profession ought to be very much obliged to them for their courtesy.

The *Chairman* then took the opinion of the meeting as to whether Mr. Ripley should be allowed to proceed, which was decided in the negative.

Mr. Wing then rose to propose the first resolution, which he said he had willingly undertaken, being anxious to do all in his power for the honour and advantage of the profession. The resolution which he had to propose was to the effect—"That the profession of attorneys and solicitors is unjustly taxed towards the exigencies of the state, and that the payment of the duty of 120*l.* on their articles of clerkship,



and 25*l.* on their admission (equivalent, on the average of lives, to the annual payment of 9*l.* and upwards,) and the annual certificate duty of 12*l.* and 8*l.*, besides the income tax of 3 per cent. paid by them in common with the rest of the community (making altogether an income tax of 10*l.* per cent. on the average of their professional incomes) is unjust and oppressive." He proceeded to show that these duties were partial, unequal, and unjust, and in support of his views, quoted from a printed document which he held in his hand, the following statements:—

The pupils or apprentices in the medical profession, and in all trades and other business, pay a duty on their indentures only proportioned to the premium. The premium on articles of clerkship does not, on the average, exceed 200*l.*; and consequently, the duty thereon, if equal justice were observed, ought to be 6*l.* only, instead of 120*l.* Nor is any other profession than that of attorneys, solicitors, and proctors charged with similar stamp duties: nor is any annual stamp duty imposed on the higher branch of the legal profession. Such duties are not founded on any just principle of taxation. If a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, it ought to be levied not only on the three learned professions, but on all merchants, bankers, manufacturers, traders, and others. A small tax on each would remove the grievance complained of, and at the same time produce far more than the amount now levied unjustly upon attorneys and solicitors. It is now an established principle that there should be no "class legislation;" that taxes should be general, and not be imposed for the protection of manufacturing, agricultural, or any other class. If, therefore, it be wrong to levy imposts on the community for the benefit of a class, it must be equally wrong to impose burdens on one class in exoneration of the rest. The attorneys and solicitors, in common with their fellow subjects, pay at least their equal share of all the taxes imposed on the community at large. The certificate duty, which falls exclusively on their branch of the profession, amounts, on an average of the incomes of attorneys and solicitors, to 4*l.* per cent.; and, therefore, if they are still required to pay the income tax on their professional earnings, ought they not in fairness and justice to be relieved from the certificate duty? otherwise they will be subjected to a burden of double the amount borne by other classes of the public. By the operation of many recent changes in the law and the practice of the courts, and by enactments relating to deeds and other documents, the emoluments of the profession have been much diminished, although the disbursements continue very nearly the same as heretofore. This is submitted to the consideration of the legislature as another reason, if another were required, why this tax should be repealed. The severe pressure of the certificate tax is strikingly shown by the inability of several hundred attorneys to pay it

within the time fixed by the act, the 16th December in each year. In the last year 266 solicitors did not pay it till the following year, and were consequently excluded from the Stamp-Office Law List. Of these, 65 paid only within the last month of the year; and 170, having neglected for upwards of a year, were compelled to give public notice, and apply to the Court for permission to renew their certificates. He quite concurred in the whole of this statement but he begged to say that in alluding to the medical profession they did so merely to illustrate their own case, and not from any desire to throw the burthen on other shoulders [hear]. He hoped the meeting would not consider, after what had fallen from Mr. Ripley concerning a bill which he said they were anxious to thrust down the throat of the Chancellor of the Exchequer, that they were then assembled for any political purpose whatever [hear], or for any other purpose that could induce her Majesty to suppose that they were less loyal or devoted subjects than any other class of her Majesty's faithful people [cheers]. The course which they were now called on to pursue was to bring before parliament and the government a fair statement of the grievances they laboured under, and to point out or devise either by the fiscal regulation of the stamp laws or by some other means, a way by which the injustice might be remedied and put an end to [cheers]. Let them urge this quietly and respectfully, but at the same time firmly, and they must ultimately prevail. He had seen the poorer members of their profession labouring honestly, industriously, and economically to gain a respectable competency; and yet such was the prejudice against them in the public mind, that although no man in the community was so useful as an honest and respectable attorney, yet the public took a delight in calumniating them [hear, hear]. He would now show them how the government could easily relieve them from this unjust tax without losing anything to the revenue. They all knew that the duty on settlement was 25*l.*, and that the father of an illegitimate child might settle 100,000*l.* on his child for that amount without paying the 10 per cent. legacy duty [hear, hear]. There was then the conveyance of lands and the exemptions that existed in the transfer of shares and stock of the Bank of England and South Sea Company [hear, hear, hear]. A man might give 50,000*l.* consols for an estate, and pay only a duty of 1*l.* 15*s.* [hear, hear]. Did not this show them, then, how perfectly easy it would be for the government to relieve them from this duty? [cheers].

Mr. Kinderley seconded the resolution.

Mr. Cope supported the motion, stating that although the duty on an average of lives was stated to amount to 10 per cent., yet on those who were struggling for a position, and whose incomes only averaged from 100*l.* to 250*l.* per annum for several years, it often amounted to as much as 20 or 25 per cent. on their incomes.

Mr. Austen explained the circumstances in which a deputation from the Incorporated Law

Society had waited on the Chancellor of the Exchequer at the time a deputation from Manchester was in town for the same purpose.

Mr. *Burchell*, the under-sheriff for Middlesex, stated, that in his official capacity as clerk to the Income Tax Commissioners, he had had repeated opportunities of seeing sufficient to convince him of the injustice of the certificate duty, as it affected the poorer members of the profession, and he would be happy to do everything in his power to assist in obtaining its repeal.

After considerable discussion, and an attempt on the part of one or two persons to disturb the pre-arranged order of the proceedings by introducing amendments, petitions, and substantive resolutions, many of them being perfectly irrelevant to the object of the meeting—

Mr. *Southec* thought the heads of the profession were entitled to the thanks of their poorer brethren for the kindness with which they had interested themselves in this matter; but if they failed in preserving unanimity amongst themselves, it was impossible they could expect sympathy from the public [cheers].

The resolution was then put from the chair, and adopted unanimously.

Mr. *Keith Barnes* proposed the next resolution, to the effect—"That as the income of attorneys and solicitors is derived from severemental application, is dependent on health, and is consequently of a precarious tenure, instead of paying a greater tax than others, the taxes on their professional incomes should be in proportion to such tenure."

Mr. *Armstrong* seconded this resolution, which, after some discussion, was adopted.

Mr. *Crowder* moved the next resolution. It was to the effect, "That if any special taxes on the profession were considered necessary by the legislature, as a protection to the public against the entrance or continuance of improper members therein, the whole income derived from that source should be applied in making public provision for the education, on an improved system, of the rising generation of the profession, and should not be applied to the fiscal purposes of the state." That resolution was only proposed to meet any objection that might be raised, that the duty was imposed to prevent the admission of improper persons into the profession. He considered that they had great reason to ask for the total abolition of the duty; but if the legislature considered it necessary to ensure the respectability of the profession, it ought at least to be applied to forward the advancement of the profession. Nor were they without a precedent for this motion, as in Ireland a portion of the duty was so applied.

Mr. *Field* seconded the motion. The duty had been originally imposed with a view of limiting the numbers of the profession, who were popularly considered to promote litigation, whereas, without the existence of courts of justice and the legal profession, no property would be safe. [Hear, hear]. Afterwards, when an excuse was wanted to continue the impost, it was stated that it had been imposed

to ensure the respectability of the profession; but he contended that it had not had that effect, as was proved by the annals of the Old Bailey even within the last few weeks; one certificate being made use of as a kind of pirate flag, under which five or six pirates on the profession acted. While every other class of the community was increasing that of the solicitors was diminishing, the number of articled clerks being 100 less now than it was 10 years since, and the Law List remaining at the same number as it was at that time—the 200 or 300 admitted each year only being sufficient to fill up vacancies from death or retirement. If the legislature thought it necessary that the impost should be continued, it ought at least to be applied to promote the interests of the profession, especially as a committee of the House of Commons had reported in favour of a kind of law university for the education of persons intended for the legal profession, and for which, he supposed, it would be proposed to still further tax the attorneys and solicitors.

Mr. *Orlando Webb* opposed the motion. They ought to go the whole length in endeavouring to get the duty repealed. [Cheers]. He urged them to follow the advice of Sir Robert Peel, given on another occasion, and agitate—agitate—agitate! Let them put their names on the register, and, when their votes were asked for, exact a pledge from their representatives to oppose this duty. He did not like half measures, and he was confident, if they made a bold push, they would be listened to. [Applause.] But if they did not do so, they could have no hope of a successful result to their efforts.

Mr. *George Bruce* supported the views of the last speaker.

Mr. *Crowder* withdrew his motion, and reiterated his views in bringing it forward, having been told by several members of parliament that the continuance of the duty would be supported on the ground that it tended to keep the profession respectable.

Mr. *Currie* then moved that the foregoing resolutions be advertised in the daily papers, and that a petition founded on them be prepared for the signatures of the profession.

Mr. *Coverdale* seconded the motion.

Mr. *Patrick Murrough* proposed an amendment, which he considered was desirable should be adopted, as it pointed out a definite mode of procedure to get rid of the grievance of which they complained. It was to the effect, as far as we could gather amidst the general laughter with which it was hailed, that the members of the legal profession do nominate twelve gentlemen as a deputation to wait on the First Lord of the Treasury, the Chancellor of the Exchequer, and the Secretary of State for the Home Department, and represent that in consequence of the act 9 & 10 Vict. c. 95, (the County Courts Act,) having become the law of the land, the legal profession have been deprived of half of their practice, and that those who depend on the agency of country firms have been nearly beggared; and that those

who had not the good fortune to have Chancery and family business had been compelled to discharge their clerks and subsist on a very scanty income. That in order to alleviate the distress thus caused, her Majesty's ministers be urged to support a total repeal of the certificate duty.

Mr. Ripley seconded the amendment, and was proceeding to attack the council of the Law Institution, amidst most pointed marks of disapprobation, when, on an appeal being made to Mr. Murrrough to withdraw his amendment, he consented to do so, and the original resolution was carried *nem. con.*

A draft of a petition to parliament on the subject was then agreed to, and thanks being voted to the chairman, the meeting separated.

## RETURNS TO PARLIAMENT RELATIVE TO MASTERS IN CHANCERY.

**RETURN** showing the date of the appointment of each of the undersigned Masters in Ordinary in Chancery, with the annual amount of each of their respective salaries, and when paid; also stating whether any and which of such Masters are, under any and what act or acts of parliament, entitled, upon retirement, to any and what retiring pension.

J. E. DOWDESWELL, appointed February 8, 1820.

WILLIAM WINGFIELD, appointed February 16, 1824.

J. W. FARRER, appointed March 9, 1824.

SIR GIFFIN WILSON, appointed March 23, 1826.

WILLIAM BROUGHAM, appointed March 23, 1831.

They, said Masters, severally receive under the 3 & 4 Wm. 4, c. 94, a salary of 2,500*l.* per annum, paid quarterly on the 25th day of February, the 25th day of May, the 25th day of August and the 25th day of November, in each year.

They also severally receive, under the provisions of the last-mentioned act, the annual sum of 725*l.* paid quarterly on the days before mentioned, such annual sum being a compensation for the loss they sustained by the abolition of the fees and emoluments to which they were entitled previous to the passing of the said act of the 3 & 4 Wm. 4, c. 94.

The following Masters, viz., Dowdeswell, Wingfield, Farrer, Wilson, Brougham, and Russell, are entitled to a retiring pension, under an act of the 46 Geo. 3, c. 128, by which the Lord Chancellor is empowered "to order (if he shall so think fit) an annuity, not exceeding 1,500*l.*, to be paid to any of the 11 Masters of the High Court of Chancery, who shall have been a Master for the term of 20 years, or who shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and who shall be desirous of resigning the same."

Each of the Masters is also entitled to an ancient payment of 2*l.* 16*s.* 6*d.*, payable out of

the Petty Bag Office, denominated robe-money; this sum is not paid to the Masters themselves, but is received for them, and is applied to petty expenses connected with their offices.

(Signed)

J. E. DOWDESWELL.

WM. WINGFIELD.

J. W. FARRER.

G. WILSON.

W. BROUGHAM.

*Southampton Buildings,*

*February 22, 1848.*

### RETURN OF SIR WILLIAM HORNE.

I was appointed Master on the 29th of July, 1839. My salary is 2,500*l.*, payable quarterly, on the 25th of February, the 25th of May, the 25th August, and the 25th November, in every year.

By virtue of two several acts of parliament of the 46 Geo. 3, c. 128, s. 2, and the 3 & 4 Wm. 4, c. 94, s. 50, the Lord Chancellor may order an annuity not exceeding 1,500*l.* a year, to be paid to me if afflicted with permanent infirmity disabling me from the due execution of my office.

(Signed)

WM. HORNE.

*23rd February, 1848.*

### RETURN OF WILLIAM HENRY TINNEY, ESQ.

I was appointed a Master in Ordinary in Chancery on the 20th day of December, 1847. My salary amounts to 2,500*l.* a-year, payable quarterly on the 25th of February, the 25th of May, the 25th of August, and the 25th of November; and in case I shall be afflicted with any permanent infirmity disabling me from the due execution of my office, and shall be desirous of resigning the same, I shall be entitled to such an annuity or clear yearly sum as the Lord Chancellor shall appoint, not exceeding 1,500*l.*, pursuant to the 46 Geo. 3, c. 128, and pursuant to 3 & 4 Wm. 4, c. 94.

(Signed)

W. H. TINNEY.

### RETURN OF THE HON. SIR GEORGE ROSE.

I was appointed a Master in Ordinary in Chancery in the month of December, 1840. My salary amounts to 2,500*l.* a-year, payable quarterly, on the 25th February, the 25th May, the 25th August, and the 25th November; and in case I shall be afflicted with any permanent infirmity disabling me from the due execution of my office, and shall be desirous of resigning the same, I shall be entitled to such an annuity or clear yearly sum as the Lord Chancellor shall appoint, not exceeding 1,500*l.*, pursuant to the 46 Geo. 3, c. 128, and pursuant to 3 & 4 Wm. 4, c. 94.

(Signed)

G. ROSE.

### RETURN OF N. W. SENIOR, ESQ.

I was appointed the 11th of June, 1836. My salary is 2,500*l.* a-year, paid quarterly, under the 46 Geo. 3, c. 128, s. 2, and the 3 & 4 Wm. 4, c. 94, s. 50; the Lord Chancellor may order

an annuity not exceeding 1,500*l.* a-year to be paid to me, if I should be afflicted with permanent infirmity disabling me from the due execution of my office.

(Signed) NASSAU W. SENIOR.

#### RETURN OF RICHARD RICHARDS, ESQ.

Date of appointment.—15th October, 1841.  
By act of parliament passed in that month.

Annual amount of salary—2,500*l.*

When paid.—25th February, 25th May, 25th August, and 25th November, in each year.

Retiring pension.—Such an annuity, not exceeding 1,500*l.*, as in case I shall be afflicted with permanent infirmity, disabling me from the due execution of my office, and be desirous of resigning the same, as the Lord Chancellor shall think fit to order.

Act of parliament—5 Vict. c. 5.

(Signed) R. RICHARDS.

Return of the Names of the Masters in Ordinary who have, since the year 1830, retired upon any and what retiring pension, and for what periods the same were respectively paid and received.

| (Name.          | Amount<br>* of<br>Pension. | For what Period Paid<br>and Received. |
|-----------------|----------------------------|---------------------------------------|
|                 | £                          | From                                  |
| F. P. Stratford | 1,500                      | 5 Jan. 1831 to 10 Oct. 1841.          |
| S. C. Cox       | 1,500                      | 5 Jan. 1831 to 5 Jan. 1839.           |
| J. Stephen      | 1,500                      | 5 Jan. 1831 to 10 Oct. 1832.          |
| J. S. Harvey    | 1,500                      | 5 April 1831 to 5 July 1833.          |
| F. Cross.       | 1,500                      | 5 Jan. 1839 to 6 Feb. 1843.           |
| W. G. Adam.     | 1,500                      | 5 April 1839 to 16 May 1839.          |
| Lord Henley     | 1,500                      | 17 Sept. 1840 to 3 Feb. 1841.         |
| A. H. Lynch     | 1,500                      | 25 Mar. 1847 to 5 July 1847.          |

I. J. JOHNSON,  
*Solicitor to the Suitors' Fund.*

19, Southampton Buildings,  
February 25, 1848.

#### CAN A BARRISTER REFUSE A BRIEF?

A Correspondent at Cambridge inquires "whether a counsel can with propriety undertake the cause of a client when he is aware or suspicious that it is wrong?"

It is clear, we think, that an attorney may refuse a retainer, (perhaps on account of his legal responsibility for the expenses and conduct of the cause.) But a barrister, so long as he practises, is bound by the usage of the bar to take a brief in the court he has selected,—and, having accepted the brief, he must see that justice is done according to law towards his client. The guilt or innocence of the accused can only be legally or judicially known after the examination of witnesses and the verdict of the jury on the facts, and the decision of the judge on the law. The duty of the advocate is only ministerial. On the other hand, the at-

torney enters into a legal contract to conduct the case with skill and diligence, and is answerable in damages for his neglect, but in order to bind him to that contract, he must voluntarily enter into it. The barrister is not legally responsible. He has no lawful claim for his fees, nor is he liable for the consequences of the most unfortunate forgetfulness of the facts, clearly stated in his brief, nor for the want of knowledge of the law, nor for the most fatal mismanagement of the case. But he is bound in honour to accept the brief, and to act for his client to the utmost of his skill and ability.

#### INCORPORATED LAW SOCIETY.

##### MR. WARREN'S LECTURES.

LECTURES will be delivered in the Hall of this Society on the 29th of May, and 2nd, 5th, and 9th of June, on the Professional, Moral and Social Duties of Attorneys and Solicitors. By Samuel Warren, Esq., Barrister-at-Law.

The subscribers to the Lectures on Equity, Common Law, or Conveyancing will be admitted gratuitously to these lectures, upon the production of a ticket, which may be obtained of the secretary.

#### INDIAN GRANT OF LAND.

y. c. 1018.

(From the original Sanskrit.)

"Aricesari Deva Raja, Sovereign of the Great Circle, to Sri Ticcapanja, Domestic Priest."

It commences with complimentary stanzas :

"May he who in all affairs claims precedence in adoration ; may that Gan Ariarjaca, averting calamity, preserve you from danger!" &c., &c.

Then follows a sort of genealogy of the grantor, very figurative and unintelligible. From this we come to the operative part of the deed.

"The Chief Minister, &c., being present, he the fortunate Aricesari Deva Raja, Sovereign of the Great Circle, thus addresses even all who inhabit the city Sri Sthanaca, &c. Reverence be to you, as it is becoming, with all the marks of respect, salutation and praise!"

Then follow nine stanzas on the uncertainty of life, and in praise of liberality, especially the granting of land :—"A donor of land is born in our family, he will redeem us," &c., &c.

"Thus, &c., [date]. I having bathed in the opposite sea, &c., &c., have granted to him, who has viewed the preceptor of the gods, and of demons, who has adored the Sovereign Deity, has sacrificed, caused others to sacrifice, has read, caused others to read, &c., &c., &c., to the domestic priest, the reader Sri Ticcapanja, son of Sri Chch'hintapanja, the astronomer, for the purpose of sacrificing, causing others to sacrifice, reading, causing others to read, &c., of paying due honours to guests and strangers, and of supporting his own family,

the village of Chairnara, standing, &c., and the boundaries of which are, &c., &c.; that land thus surveyed on the four quarters and limited to its proper bounds, with its herbage, wood and water, and with power of punishing for the ten crimes, except that before given as the portion of Deva or of Brahma, I have hereby released and limited by the duration of the sun, the moon, and mountains, confirmed with the ceremony of adoration, with a copious effusion of water, and with the highest acts of worship; and the same land shall be enjoyed by his lineal and collateral heirs, or caused to be enjoyed, nor shall disturbance be given by any person whatever since it is thus declared by great Munno."

Then follow many more stanzas in praise of liberality and execrating all trespassers, &c., &c., amongst which are the following:—

"He who seizes land, given by himself or by another, will rot among worms, himself a worm in the midst of verdure.

"By seizing one cow, one vesture, or even one nail's-breadth of ground, a king continues in hell till an universal destruction of the world has happened.

"A grantor of land remains in heaven 60,000 years; a disseisor and he who refuses to do justice continues as many years in hell."

Thus terminates the whole:—

"Whatever herein may be defective in one syllable, or have one syllable redundant, all that is nevertheless complete evidence of the grant."

#### LAW APPOINTMENT.

THE Queen has been pleased to nominate and appoint the Hon. Charles Edward Pepys, to be Clerk of the Crown in Chancery, in the room of Leonard Edmunds, Esq., resigned.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From Feb. 22nd, to March 17th, 1848, both inclusive, with dates when gazetted.*

Brine, Thomas Charles Augustus, Wimborne Minster. Feb. 29.

Brooks, John Ashton-under-Lyne. March 10.

Collis, John, Cannock. March 17.

Donald, John Reed, Carlisle. March 10.

Gard, Edward Oram, Devonport. Feb. 25.

Greenwood, Richard, Skipton. Feb. 29.

Grevile, Giles, Bristol. March 7.

Jubb, Hen., Herringthorpe, near Rotherham, Feb. 29.

Pratt, James, jun., York. March 3.

Shackles, Charles Frederick, Hull. March 3.

Snell, George Wells, Callington. March 3.

Stansfield, John Fish, Accrington. March 14.

Woodburn, John Dale, Preston. Feb. 22.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Feb. 22nd to March 17th, 1848, both inclusive, with dates when gazetted.*

Furner, William and George Philcox Hill, Brighton, Attorneys and Solicitors. March 14.

Geldard, Christopher John and Christopher Ingleby, Settle, Attorneys and Solicitors. March 17.

Holmes, Alfred Green and Charles Bonython Borlase, 25, Great James Street, Bedford Row, Attorneys and Solicitors. Feb. 25.

Mayhew, Alfred and Thomas Andrew Fitzgerald Reynolds, (practising under the style or firm of Mayhew, Son, and Reynolds,) 26, Carey Street, Lincoln's Inn, Attorneys, Solicitors and Conveyancers. Feb. 29.

Reade, Compton and Edward Searle, Birkenhead, Attorneys and Solicitors. March 17.

#### PERPETUAL COMMISSIONER.

*Appointed under the Fines' and Recoveries' Act.*

Woosnam, Charles Thomas, Newtown, in and for the county of Montgomery, and in and for the counties of Radnor and Salop. March 17.

#### LEGAL OBITUARY.

1848, Jan. 28.—Edward Toller, of Doctors' Commons, aged 81, Proctor and Notary.

Feb. 2.—J. C. Rutledge, one of the Senior Clerks of Accounts in the Court of Chancery, aged 41.

Feb. 3.—Joseph Woodhouse, of Hereford, Solicitor, aged 73. Admitted on the Roll, Easter T., 1796.

Feb. 6.—G. H. Lewis, of the Middle Temple, Barrister-at-Law, aged 24.

Feb. 8.—Richard Doane, of the Inner Temple, Barrister-at-Law. Called to the Bar, 12th Feb. 1830.

Feb. 13.—Mark Jameson, of Berwick-on-Tweed, Solicitor, aged 72. Admitted on the Roll, Michaelmas T., 1798.

Feb. 23.—Henry William Morris, of the Middle Temple, Barrister-at-Law, aged 43. Called to the Bar, 8th May, 1846.

March 3.—Richard Musgrave, of the Inner Temple, Barrister-at-Law, aged 57. Called to the Bar, 7th June, 1844.

March 5.—John Arnold, of Birmingham, Solicitor, aged 70. Admitted on the Roll, Easter T., 1799.

March 13.—Charles John Lawson, of the Middle Temple, Barrister-at-Law. Called to the Bar, 23rd Nov. 1798.

March 16.—Charles Rowland Parker, of Blackheath, Solicitor, aged 73. Admitted on the Roll, Easter T., 1808.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Attorney-General of the Duchy of Cornwall v. Lumbe.* Jan. 11 & 15, 1848.

## ANSWER.—DEEDS.—TITLE.

Held, that a defendant was bound to produce a deed which might tend to show that he was joint tenant with the plaintiff of certain lands, though he stated that the deed purported to convey to him such interest in the lands only as the conveying party was exclusively entitled to.

THIS was a motion for the production of documents relating to certain waste lands within the Duchy of Cornwall, which the information claimed as belonging to the Duchy. It appeared that the lands in question were formerly part of the manor of Treverbyn, which, by an act of parliament of the reign of Henry 8, had been divided into two manors,—the manor of Treverbyn Trevanion, which was allotted to the Trevanion family, and the manor of Treverbyn Courtney, which was annexed to the Duchy. On the occasion of this division of the manor, the old enclosed lands were apportioned between the two manors, the waste lands being left the joint property of the owners of the two manors; the manor of Treverbyn Trevanion having, among the ancient tenements allotted to it, four called Carnen Rosemary, Rosevear, Rosevean, and Hallibert. By a deed dated the 2nd of February, 1829, Mr. P. B. Trevanion, in whom the manor of Treverbyn Trevanion was at that time vested, conveyed to the defendant all the four tenements above mentioned, "with all chief rents payable in respect thereof, and all the manorial and other rights, jurisdictions, royalties, hereditaments, and appurtenances of, in, and respecting the said messuages, and in the waste lands and commons which had heretofore been exclusively used, or deemed exclusively to belong to the same." The lands claimed as passing by this conveyance were about 500 acres, and the question raised by the present information was, whether the whole of these lands were old enclosures, as the defendant mentioned, or whether, as was maintained on the part of the Duchy, the old enclosure was limited to certain specified parts of the lands only, leaving the Duchy joint tenants with the defendant of the remainder of the lands. The documents, the production of which was now asked for, were the deed by which the lands in question were conveyed to the defendant, and a map referred to in the deed.

Mr. Turner and Mr. Elmsley, for the motion, contended that the deed and map in question would, or at least might be, evidence for the Duchy, since if they showed a title in the defendant to the lands in dispute only as lord of the manor, they would at the same time show a joint title in the Duchy. *Combe v. Corporation of London*, 1 Y. & C. 631; *Neesom v. Clarkson*, C. P. Cooper, 193. And that even if this

were not so, the defendants having set forth part of the deed upon their answer, could not refuse to produce the original. *Latimer v. Neate*, 11 Bligh, 141.

Mr. Kindersley, contra, contended, that the deed, inasmuch as it purported to convey only the ancient tenements and whatever rights exclusively belonged to them, could not be evidence of the claim set up by the information, for that, if established, would be a tenancy in common. As to the right to inspection claimed in consequence of the partial setting forth of the deed on the answer, he referred to the observations of the Vice-Chancellor Wigram on *Hardman v. Ellmanes*. See Wigram on Discovery, pp. 305 to 342, 2nd edition.

Lord Langdale, after reciting the facts of the case, said, that he thought enough had been admitted on the answer of the defendant to show that the deed and map might bear upon the plaintiff's title, and he therefore must give him the right of inspecting them.

## Vice-Chancellor of England.

*West v. Lahing.* Feb. 18, 1848.

## CONSTRUCTION OF WILL.—RESIDUE.

A testator gave to the sons and daughters of T., viz., M. T., J. E., F. T., W. T., J. J., and E. M., 100*l.* each, F. T. excepted, "as the interest of such share shall be paid to M. T. for life, then the said 100*l.* to be given to F. T.'s children;" and he gave the residue to A. F. for life, and after her decease he gave all his remaining effects whatsoever to the sons of and daughters of W. T., (except and excepted as aforesaid): Held, that the children of F. T. took no part of the residue.

A TESTATOR devised in the following terms:—"I give unto the sons and daughters of William Todd deceased, viz., Margaret Todd, spinster, Isabella Elliott, wife of J. E. Elliott, Fryer Todd, W. Todd, Jane Janson, and Eleanor Malcolm, wife of J. Malcolm, 100*l.* sterling each, Fryer Todd excepted, as the interests of such share shall be paid to his sister, Margaret Todd, half yearly during her life, then the said 100*l.* sterling to be given to Fryer Todd's children, to the survivor or survivors, share and share alike. I then give to my niece Agnes Foster all the interest of such of my effects as remain after payment of the legacies aforesaid, to be paid half-yearly during her life, and her receipt to be a proper discharge then, and after her decease I give unto the sons and daughters of W. Todd aforesaid, deceased, (except and excepted as aforesaid,) all my remaining effects of what kind soever to the survivor or survivors of them, share and share alike." Agnes Foster being dead, a question arose as to the mode of dividing the residuary estate of the testator.

Mr. Faber, for Eleanor Malcolm, Mr. Follett and Mr. Smythe, for the representatives of the children of W. Todd, except Fryer Todd, con-

tended that the fund ought to be divided into five parts, and one part given to each of the children of W. Todd, Fryer Todd excepted.

Mr. Metcalfe, for the children of Fryer, urged that the fund should be divided amongst the children of W. Todd, except as to one share which was to be given to Margaret Todd for life, remainder to the children of Fryer Todd.

The Vice-Chancellor said, he could not give the fund in the way contended for in favour of the children of Fryer Todd; the words of the residuary clause did not sanction such a construction of the meaning of the testator. He thought the right view of the case was the one taken by the counsel for the representatives of the other children of Mr. Todd, and he should order the fund to be divided accordingly.

### Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

*Exparte Oldaker, re Oldaker.* Dec. 15th & 20th, 1847.

#### FREEDOM FROM ARREST.—SURRENDER IN DISCHARGE OF BAIL.

*A party who, under the 8th section of statute 1 & 2 Vict. c. 110, executes a bond, and has a verdict given against him, and who afterwards has a fiat issued against him, to which he surrenders and then renders ... discharge of his bail in the bond, is not entitled to his discharge under the 23rd section of the statute 5 & 6 Victoria, c. 122.*

THE petitioner was indebted to Messrs. Crookes and Gibbons, for goods sold and delivered in 173*l.* 10*s.* Mr. Gibbons filed an affidavit of the debt on 18th of Sept., 1847, and on the 21st a copy of it was served on the petitioner, Mr. Oldaker, and with a notice requiring immediate payment of the debt and interest to the time of payment. On the 7th of the following month the petitioner, with J. Pulley and M. Racster as his sureties, executed a bond pursuant to the act 1 & 2 Vict. c. 110, s. 8, conditioned for the payment by him of such sum of money as should be recovered against him in any action for the debt, or for the render of him to the gaoler of the court in which the action should be brought, according to the rules and practice of such court. On the 18th of Sept. Gibbons and Crookes had commenced an action in the Court of Queen's Bench, and a verdict was returned for them for 203*l.* 13*s.* debt, interest, &c. On the 3rd of December following a fiat issued against him, and on the 6th, between 1 and 2 o'clock, he surrendered and received a certificate or protection from arrest, indorsed on the summons served upon him to appear and be examined, up to the 21st of December. Between 3 & 4 o'clock of the same day the petitioner rendered himself in discharge of the bond and of his sureties J. Pulley and M. Racster, according to the practice of the Court of Queen's Bench, and he was thereupon committed to the custody of the keeper of the Queen's Prison. He

then applied to his creditors Gibbons and Crookes, through their solicitors, for his discharge, and also to the keeper of the gaol for the same purpose by reason of his protection, but all refused, and he then took out a summons before a judge to show cause why he should not be discharged. On the 9th of December the summons was heard before Mr. Justice Patteson, and on the following day the same was dismissed, the learned judge indorsing it thus:—"The bankrupt not having been arrested, but having rendered in discharge of his sureties, is not within the acts respecting protection from arrest, and this summons must be dismissed. J. P. Dec. 10, 1847."

Mr. Russell and Mr. Glasse, in support of the petition, insisted that Mr. Justice Patteson had taken an erroneous view of the act 5 & 6 of the Queen, which, by the 22nd section, enacted that a person adjudged bankrupt shall be free from arrest or imprisonment during the time limited for his surrender, and from such time as should be allowed for the proceedings of his examination as the Court of Bankruptcy should by indorsement on his summons appoint. The time limited by the commissioner did not expire until the 21st of December, and he was in custody in discharge of his sureties before that time, and therefore entitled to his discharge. The learned judge must have held, and erroneously, that the words "arrest or imprisonment" meant "arrest and imprisonment," a reading of the act contrary to the true meaning. He must have considered that a debtor was not entitled to his protection, unless he was both arrested and imprisoned by the creditor. In the case of *Exparte Leigh*, 1 Glyn & Jam. 264, it was held that a debtor who is at large on bail is not in custody within the meaning of the exception in the statute then in force, the words of that statute (5 Geo. 2, c. 30,) being the same as the present, and in that case Lord Eldon, after taking the opinion of Lord Ellenborough, ordered the bankrupt to be discharged who had been arrested or had had detainers lodged against him.

Mr. Speed opposed the petition, contending that, in the first place, the proper court wherein to review the decision of Mr. Justice Patteson was the Court of Queen's Bench *in Banco*, and secondly, that the petitioner was within the express words of the exception of the statute 5 & 6 Vict. c. 122, the 23rd section of which concluded with the words, "Provided he be not in custody at the time of such surrender." To show that the bankrupt, who was out on bail of his sureties, was in custody in contemplation of law, namely, the custody of his bail, it was needful only to refer to *Exparte Gibbons*, 1 Atk. 238; *Anderson v. Hampton*, 1 Barn. & Ald. 308; *Exparte Johnson*, 14 Ves. 36. If, however, the petitioner were not within the exception of the statute, he was plainly not within the enacting part, for his custody was his own seeking, his own act; the creditor did nothing, but the debtor rendered of his own accord. The bail in that bond were no creditors, but only sureties, and the act protects against both



arrest and imprisonment by a creditor, but not by a bail. Beyond this the effect of the court holding that a surrender by a debtor in discharge of his bail is an imprisonment by a creditor, would be to deprive the creditor of his right to prove under the fiat, for by the taking of a debtor in execution after a fiat the creditor elects, and is debt is thereby satisfied. *Ex parte Knowell*, 13 Ves. 192.

Mr. Russell replied.

Sir J. L. Knight Bruce. At present I feel too much doubt to enable me to surmount the weight of the authority of Mr. Justice Patteson, and to say that I have no doubt about it. Having such respect, which I entertain in common with the whole profession, for his judgment, which is of the highest order, I should have been bound to act at once, as I must at last, upon my own opinion. Unless I can deliver my mind from doubt upon the subject, I shall not feel myself able to act against the authority of that learned judge. I shall consider the case, and shall be glad to find that I can discharge the party.

Dec. 20th. Sir J. L. Knight Bruce, V. C. In this case, when the fiat issued,—when the bankrupt regularly surrendered which he did under it, and when, upon that surrender, he regularly received the ordinary protection from the commissioner, covering a time not yet expired,—he was not in custody,—in any other custody at least than the virtual custody, if any, of persons who, under the provisions of the statute mentioned in the petition, being one of the statutes upon which the argument turned at the bar, had before the fiat become his surety. He was not actually in custody, nor was he under any restraint. The imprisonment from which he asks to be discharged commenced after the protection granted, but it was of his own seeking by yielding himself in execution under a judgment obtained against him before the fiat in an action upon the demand to which the suretyship related. He did that of his own motion and accord. There is neither arrest nor intervention in the least of any other person, either by any plaintiff or by the surety, although probably the object was to discharge or relieve the sureties. I suppose they are or will remain discharged. Whether the bankrupt is wrong in his present contention, or whether he is right in it, may be less clear, but I give no opinion. He there spontaneously puts himself in imprisonment. He then applied to Mr. Justice Patteson to be discharged. That learned judge heard and refused the application, holding that the other statutory provisions upon which the bankrupt relied did not apply to the case. The same application,—except, of course, in the difference of jurisdiction,—the same application in effect has been made to me, and I have considered it. Had I been able to form a clear opinion upon this question, probably it would have been my duty to act upon it, although at variance with that of Mr. Justice Patteson, (the great weight of whose authority every lawyer acknowledges,) but I have not been able to form a clear opinion upon

the question. I think it is one of doubt and difficulty, whether considered with or without reference to the decision of that learned judge. It is, however, not impossible, in the absence of precedent, that I might have been able to decide in favour of personal freedom, and therefore in favour of the bankrupt's discharge; but I cannot, upon a merely legal question, which is involved in the obscurity of two acts of parliament, discharge my mind of the doubts I entertain, with satisfaction to myself, or with propriety against such an authority as that before me. I must leave the petitioner to the ordinary legal remedy open to every prisoner who considers himself illegally detained in custody. I therefore dismiss the petition, without costs, and without prejudice to any application to any other court or judge.

### Eachquer.

*Ley v. Barlow.* Jan. 28, 1848.

RAILWAY COMPANY.—RIGHT OF ALLOTTEE AS AGAINST COMMITTEE-MAN, TO MAKE EXTRACTS FROM PARLIAMENTARY CONTRACT AND SUBSCRIBERS' DEED.—LIEN OF ATTORNEY.

*When the parliamentary contract and the subscribers' deed are in the possession of a party to such deed who has acted on the committee, or of his attorney, or of the attorney to the company, the court will compel the production of the deed for the inspection of an allottee who has commenced an action against such party, in order that such allottee may be enabled to take extracts necessary for him properly to frame his action.*

THIS was an action by the plaintiff, as allottee of railway shares, to recover deposits paid upon 100 shares in the Grand Junction and Midland Union Railway Company. A rule had been obtained calling upon the defendant and his attorney to show cause why the plaintiff and his attorney should not be allowed to inspect and take copies of the parliamentary contract, and of the subscribers' agreement. The rule was obtained upon reading the affidavit of the attorney to the plaintiff, and of the secretary to the company, to the effect that the defendant was a member of the managing committee of the said company, and had frequently interfered with the management of the affairs, and upon the affidavit of the plaintiff that he was, with the defendant, a party to the deed, and did not know how to frame his case without seeing it. From the affidavit of the defendant it appeared that he had subscribed to the company as an allottee; that he was a party to the deed no otherwise than as the plaintiff was; that he was not one of the committee until it was found that the company could not go on; that he took shares and signed the parliamentary contract in order to assist in winding-up the affairs of the company; that he had taken no part in obtaining the bill; and that

the parliamentary contract was not in his control. The affidavit of defendant's attorney was, that he was not acting for the defendant as attorney to the company, but as attorney to the defendant only.

*Bramwell*, for the defendant, contended that this was not a case in which the deed was held by one of the parties for the benefit of both. Where there was a contract between two parties, and one of them only had possession of the deed, there was an implied agreement on the part of that one who had the deed to produce it when required to do so by the other party. In such case the court would interfere to compel the production. So again, where in the agreement there was a stipulation to produce it. But this was different from either of those cases. At the time of the execution of the deed the defendant was not a covenanting party, and had entered into no undertaking to produce: he did not hold the deed in the character of trustee, and therefore the court would not interfere to compel him to produce it. Besides, it did not appear that the defendant had the deed in his possession, such a presumption could not arise from the fact of his being one of the managing committee, but, on the contrary, it appeared from the evidence that when the secretary ceased to act for the company, he delivered over to the attorney of the company all books, papers, documents, vouchers, &c., belonging to the company. Suppose this action had arisen in respect of a promissory note, or bill of exchange. [*Parke*, B. 'This deed was for the benefit of the subscribers. With regard to a bill of exchange, I cannot understand, but for the practice, why a party to it should not be allowed to see it.] Would the court hold that because a person came in and got possession of a deed for his own protection, he was to produce it for any one who was a party to it in the first instance? [*Parke*, B. If a person holds a deed belonging to a company for the purpose of settling the affairs, then, *prima facie*, all the parties have a right to see it.] In this case, also, the attorney claimed a lien upon the deed, (*Kemp v. King*, 2 M. & R. 437); if, therefore, the deed was in the custody of the attorney upon a lien, it was out of the custody of the defendant. [*Alderson*, B. I remember a case tried before Lord Tenterden, in which my client held a deed under a lien, and his lordship compelled us to suffer an inspection of the deed, although by such inspection our lien became useless, because the parties thereby ascertained the fact, for the suppression of which only the deed was valuable.] The affidavit of the plaintiff, "that he had signed and was a party to the deed, and that he did not know how to frame his case without seeing the deed," did not disclose any sufficient ground for the interference of the court, (*Rowe v. Howden*, 4 Bing. 539, note). [*Parke*, B. If you are a trustee for the plaintiff, surely he has a right to see the deed to know whether he can support his action.] Upon the fact that the plaintiff had only signed to assist in winding-up the affairs, he cited

*Wyld v. Hopkins*, 15 M. & W. 517; and submitted the rule ought to be made absolute.\*

*Per curiam*. We are of a different opinion.  
Rule absolute.\*

### Bankruptcy.

*In re Phillips*. March 11, 1848.

#### APPLICATION FOR CERTIFICATE.— PRACTICE.

*The court will not entertain a bankrupt's application for his certificate, when no trade assignee has been appointed.*

THE bankrupt, J. Phillips, who carried on the business of a boot and shoemaker at Cambridge, came up this day, pursuant to advertisement, for his certificate. It appeared that the fiat had issued upon the bankrupt's own petition, under the statute 7 & 8 Vict. c. 96, s. 41; that he had no estate to distribute amongst his creditors; and that, although his debts amounted to between 500*l.* and 600*l.*, no creditor had proved and no trade assignee was appointed.

Mr. Commissioner *Fonblanque* said, that, under the circumstances of this case, he declined to entertain the bankrupt's application for his certificate. As no trade assignee was appointed, it was impossible the bankrupt could have complied with the provision of the statute, (5 & 6 Vict. c. 122, s. 39,) which required that notice of the certificate meeting should be given to the solicitor of the trade assignee. Here there was no solicitor but the solicitor of the bankrupt.

Mr. *Thorndike*, who appeared as solicitor for the bankrupt, submitted that it was not unusual for bankrupts to apply for and obtain their certificates in this court, where no assignee had been appointed. The bankrupt's debts exceeded 300*l.*, and therefore he was unable to obtain protection under the Insolvent Acts, and had no alternative but to become a bankrupt.

Mr. Commissioner *Fonblanque* said, the bankrupt might have obtained protection from the Insolvent Court under its ordinary jurisdiction. A person who had not a single pound to distribute amongst his creditors was not a fit subject for the operation of the Bankrupt Laws.

Mr. *Thorndike* said, the bankrupt's property had been taken in execution shortly before his bankruptcy, which accounted for his having no estate to distribute.

Mr. Commissioner *Fonblanque*. He ought to have made himself bankrupt sooner. He cannot have his certificate.

Mr. *Thorndike* applied for protection for the bankrupt for a limited period, to enable him to consider what should be done.

The commissioner declined to grant the bankrupt any protection.

Application refused.

\* See *Steadman v. Arden*, 15 M. & W. 587. Reporter.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## House of Lords.

## APPEALS.

The previous Sections of this Series of the Digest will be found as follow:—

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Law of Attorneys, p. 42.

Law of Railways, pp. 71, 178.

## Courts of Equity :

Law of Wills, p. 121.

Construction of Statutes, p. 149.

Principles of Equity, p. 222.

Pleading, p. 241.

Practice, p. 268.

Costs, p. 197.

Evidence, p. 299.

## Courts of Common Law :

Construction of Statutes, p. 373.

Grounds of Actions and Principles, pp. 396, 415.

Pleading, p. 443.

Practice, p. 465.

Evidence, p. 487.

## APPORTIONMENT OF RENT.

*Construction of statute.*—*Scotland.*—The act 4 & 5 W. 4, c. 22, for the apportionment of rents, annuities, and other periodical payments, extends to Scotland.

The intention of the legislature must be ascertained from the words of a statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute. *Fordyce v. Bridges*, 1 House of Lords' Ca. 1.

## CONSTRUCTION OF STATUTES.

See *Apportionment of Rent* ; *Excise Licence*.

## COSTS.

See *Guarantie* ; *Lease* ; *Railway Act*.

## DIVORCE.

*Action dispensed with.*—*Lapse of time.*—A petitioner for a divorce bill held excused for not having brought an action for damages against the adulterer, upon the statement of his witnesses, that they did not find him until three years after the discovery of the adultery, and the petitioner was not able to pay the expenses of an action.

A lapse of 16 years from the adultery not made an objection to the application for divorce at the end of that time. *In re Martin's Divorce Bill*, 1 House of Lords' Ca. 79.

## EVIDENCE.

*Interest of witness.*—To render a person incompetent in the Scotch courts to be a witness, he must have a direct and immediate interest in the result of the suit in which he is called to give evidence, or he must be able to give the verdict in that suit in evidence in his own favour in another proceeding.

An interest in the result of a suit, which is to render a person incompetent to be a witness, must be an interest of a substantial nature, and it must be the direct and necessary result of the

suit. The law was the same in England and Scotland upon this point previous to the passing of the 6 & 7 Vict. c. 85. *Willow v. Farrell*, 1 House of Lords' Ca. 93.

Cases cited in the judgment : *Ralston v. Rowatt*, 1 C. & F. 424 ; *Bent v. Baker*, 3 T. R. 27.

## EXCISE LICENCE.

*Grocer.*—*Publican.*—*Construction of statute.*

—The act 6 & 7 W. 4, c. 38, s. 3, extends to prevent a person who is already a publican from obtaining a licence to carry on the business of a grocer on the same premises, as absolutely as it does to prevent a person, licensed as a grocer, from carrying on in the same premises the business of a publican. *McKenna v. Pape*, 1 House of Lords' Ca. 6.

## GUARANTIE.

*Costs.*—*A.*, by a trust settlement, gave to his son "a like sum of 5,000*l.* sterling, payable, &c., after my decease, from which provision shall be deducted any sum that I have already advanced, or may still advance for him, to enable him to carry on his business." *A.* entered into a guarantie for 2,000*l.* for the firm of which his son was a partner. *A.* was compelled to pay that sum, and the firm afterwards becoming bankrupt, he obtained from its assets a small dividend : *Held*, that this was an advance to the son, which came within the description of money advanced to the son to enable him to carry on business, and that the son could only claim the balance of the 5,000*l.*, after deducting the sum thus advanced.

The practice of allowing the costs in such a case to be paid out of the estate, was disregarded. *Berry v. Morse*, 1 House of Lords' Ca. 71.

## LEASE.

*Equitable Mortgagee's right to redeem.*—

*Parties.*—*Costs.*—A lessee having been evicted for non-payment of rent under the Ejectment Statutes in Ireland, an equitable mortgagee of his interest filed a bill for redemption against the landlord.

*Held*, 1st, that the mortgagee was entitled, under the earliest of these statutes (11 Anne, c. 2,) to redeem the evicted premises; and 2ndly, that trustees of a settlement, to whom the lease had been assigned, were not necessary parties to the suit. Although the general rule is to make the party seeking a redemption pay the costs of the suit, the Court has jurisdiction to look to the landlord's conduct, and to throw the costs on him according to its discretion. *Gerahty v. Malone*, 1 House of Lords' Ca. 81.

## MARRIAGE SETTLEMENT.

*Portions.*—The trusts of a term in a post-nuptial settlement of real estates were: "after the decease of the husband and wife, (the settlors,) to raise 1,000*l.* for the portion of every daughter and younger son, to be paid to sons at the age of 21, and to daughters at that age or marriage, if such ages should be attained or marriages had after the decease of the

survivor of the settlors, and not sooner : and if any younger son died, or became an eldest or only son before 21, or any daughter died before that age unmarried, or before his or her portion became vested, the portions provided for such son or daughter, so dying, &c., before his or her portion became payable as aforesaid, should survive and accrue to the survivors of such daughters and younger sons, to be equally divided between them, and paid when their original portions should become payable."

Then followed a proviso for the issue of a younger son or daughter dying in the lifetime of the settlors, or after their death before his or her portion became due and payable : and a trust, after the death of the settlors, for maintenance of such sons and daughters, or their issue, entitled to portions as aforesaid, until his or her portion became payable : with cesser of the term, on payment of the portions, or in case there should not be any younger children or issue of them living at the death of the survivor of the settlors.

The settlors had seven children (besides an eldest son), four of whom died in the lifetime of their parents, under the age of 21, and unmarried : *Held*, by the Lords, reversing a decree in Chancery, that the three survivors were entitled to have the portions of the four deceased children raised for them, in addition to their own. *Evans v. Scott*, 1 House of Lords' Ca. 43.

Cases cited in the judgment : *Emperor v. Rolfe*, 1 Ves. sen., 208 ; *Cholmondeley v. Meyrick*, 1 Eden, 77, 85 ; *Hope v. Chfden*, 6 Ves. 499 ; *Woodcock v. Duke of Dorset*, 3 Bro. C.C. 569.

See *Lease*.

See *Lease*.

#### PORCTIONS.

See *Marriage Settlement*.

#### PUBLICAN.

See *Excise*.

#### RAILWAY ACTS.

*Illegal charges.—Repayment with interest.—Costs.*—A decree giving effect to allegations read from an answer, not proved nor admitted, is varied in that respect, and an inquiry on the subject is directed before the Master.

Monies paid for the use of a railway, under protest as overcharges, were afterwards paid into Court under an order made by consent, and vested in the public stocks, to abide final judgment in an action brought to try the legality of the charges, which the judgment declared to be illegal : *Held*, that the party who paid the monies was entitled to the stocks and dividends and accumulations thereof.

After the judgment at law finding payments made to the railway company to be overcharges, a bill filed, pending a writ of error on that judgment, to restrain the company from continuing the overcharges, and for an account, &c., is not improper nor premature, and the plaintiffs are entitled to the costs. *Barrett v. Stockton and Darlington Railway Company*, 1 House of Lords' Ca. 18.

#### RAILWAY CONTRACTS.

*Complicated accounts.—Bill or action.*—*N.* and *S.* contracted with a railway company, jointly and severally, to execute railway works, according to specifications and prices contained in a former contract between *N.* and the company. *S.* was to advance the money necessary for the execution of the works, and to receive from the company all monies accruing due from them in respect of the works, and apply them in discharge of *N.*'s liabilities under his contracts. *S.* became a bankrupt at the completion of the works, and the company, after paying him and his assignees part of the monies due from them, refused to account with *N.* for the balance, whereupon he filed a bill for an account against them and *S.*'s assignees.

*Held*, that although the case against the company consisted of matters cognizable at law, yet as there were complicated accounts between them and the other parties respectively, a Court of Equity was more competent to take them, and to dispose of the whole case, than a Court of Law, and the bill was sustained accordingly. *Taff Vale Railway Company v. Nixon*, 1 House of Lords' Ca. 111.

Case cited in the judgment : *O'Connor v. Spaight*, 1 Sch. & Lef. 309.

#### SETTLEMENT.

See *Marriage Settlement*.

#### SCOTLAND.

See *Apportionment of Rent*.

#### STATUTES, CONSTRUCTION OF.

See *Apportionment of Rent ; Excise*.

#### WILL.

*Construction of the word "surviving."*—A testator, after various bequests, gave to his wife, for life only, all his remaining estates, and also gave her all his capital in trade, with the three-quarters of the profits arising therefrom, for her life ; but nevertheless, in trust, at her death, for his then surviving children, share and share alike, "independent of the rental of his said estates, which he gave and bequeathed to his surviving female children," to be paid to them as he directed. The testator then proceeded thus :—"On the decease of any of these children, should they die without issue lawfully begotten, that share to fall to the rest, and so on to the last female child ; but should they marry and have children, then their share to go to the said child or children, and from my last female child to the males of my body lawfully begotten, with the same restrictions as before expressed, and to the heirs and assigns of the last of them." One of the testator's daughters, after his death, married, and died in the lifetime of the widow, leaving children : *Held*, that such children did not take any interest under the will, the word "surviving" having reference to the death of the testator's widow, and not to his own. *Wordsworth v. Wood*, 1 House of Lords' Ca. 129.

#### WITNESS.

See *Evidence*.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 1, 1848.

‘ Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

### BANKRUPTCY AND INSOLVENCY LAW AMENDMENT.

IN a recent number (*ante*, p. 454,) we submitted to our readers *in extenso*, the proposals of the Metropolitan Society of Merchants, Bankers, and Traders, for the amendment of the Law of Bankruptcy and Insolvency. Having repeatedly expressed our cordial concurrence with the general objects of this association, and our appreciation of the value and importance of the services rendered by it to the commercial and trading community, we proceed, in no unfriendly spirit, to consider the various alterations now suggested as remedies for the admitted evils arising from the existing state of the Law of Debtor and Creditor.

The unsatisfactory, and in many instances abortive, attempts recently made to wind up the affairs of insolvent firms by voluntary arrangements, and without reference to established legal tribunals, conclusively demonstrate how beneficial it would be to the public if the administration of the Bankrupt Laws were placed on such a footing that debtors and creditors might resort to them universally for protection and justice. On a former occasion, when discussing the proposed amendment of the Law of Debtor and Creditor, (*ante*, p. 106,) we ventured to suggest, that in framing such laws, the interests and feelings, as well as the rights of debtors, were not wholly to be disregarded, and we still continue to think this consideration not unworthy the attention of those who peculiarly represent the creditor class. It is not enough to say, that the intention

is to punish fraudulent and reckless traders, and to protect and assist those who have sunk under the pressure of misfortune. The result must frequently depend upon the machinery employed, and the course of procedure adopted in investigating whether the debtor is blameless, or has given just ground for complaint. When the fact is ascertained, and we are able to discriminate between the unfortunate and the extravagant or dishonest trader, care must be taken that the punishment of the latter should not be disproportioned to the nature and character of the offence, nor accompanied by such a degree of severity as to render the law odious and excite feelings of sympathy and commiseration for the offender. These considerations cannot have been overlooked by the committee entrusted with the preparation of the statement in question, but it may be doubted whether they have always been kept steadily in view during the discussion of the various changes now recommended.

The first and greatest of the proposed alterations is, a return to the principle of arrest for debt upon mesne process. This principle had our support when its advocacy was far less popular than it has now become amongst the legal profession and the trading community. We ventured to doubt the expediency of depriving the creditor of his best, and frequently his only security, by abolishing arrest for debt, at a time when those who entertained and expressed such doubts were stigmatised and ridiculed by the then Attorney-General (Sir John Campbell) as parties having “a tender regard for

the vested interests of sheriff's bailiffs." The injurious operation of the measure on private credit is now universally understood, and we doubt not great benefit will arise from retracing our steps and restoring the law of arrest, if the statutory enactments for effecting this object be framed with due caution and consideration. The committee have adopted the provisions of a bill for this purpose introduced to the House of Commons by Mr. Warburton, in the session of 1846, and the sufficiency of these provisions will be more conveniently considered on a future occasion.

The second proposal of the committee is, that the Bankrupt Commissioners should have absolute discretion to refuse or withdraw the protection of the bankrupt, that it should be compulsory not to grant protection under certain circumstances of fraud or misconduct, and that creditors who have proved their debts under a fiat should stand in the position of judgment creditors, and be at liberty to take a bankrupt deprived of protection in execution, and detain him in prison for a period not exceeding three years, unless the Commissioner who withdrew the protection should otherwise order. We are disposed to think that the alteration here proposed, with certain modifications, might operate very beneficially. Under the present law, a creditor who proves under a fiat is *ipso facto* deprived of his legal remedies against the bankrupt, and it constantly happens that when a certificate has been suspended for fraud or gross misconduct, all the judgment creditors having proved, there is no creditor in a position to take the bankrupt in execution, and none who will incur the expense of proceeding at law to obtain a judgment. The consequence is, that the suspension of the certificate merely operates to prevent the trader from embarking in business again in his own name, and however blameable or dishonest, he suffers no personal punishment or inconvenience. It may be reasonable to provide that when the bankrupt's estate has yielded a certain sum—suppose 15s. in the pound—he should be discharged from custody. The circumstance that the creditor has taken his proportion of the assets of the bankrupt's estate upon distribution, ought not, perhaps, to deprive him of the power of taking the bankrupt in execution, as the imprisonment is meant to operate as a punishment for misconduct on the part of the bankrupt, and not as a satisfaction to the creditor. Still, precautions must be taken to prevent

creditors from using the power of imprisonment for the purpose of extorting money from, or forcing arrangements upon, the bankrupt, for the benefit of the individual creditor, and without any regard to the interests of the general body. It is constantly found that the least meritorious creditors are those who are the least forbearing and most vindictive in their proceedings against the debtor, and if every creditor had the power of committing a bankrupt trader to prison, the power would be exercised by unprincipled men for purposes utterly at variance with the objects and principles of the Bankrupt Laws. There is no reason why this difficulty should not be provided against by judicious enactments, and we hope to find the clauses prepared by the committee effectual for this purpose.

The next suggestion of the committee, though not open to any serious objection, we confess, does not strike us to be of any great importance. It is proposed, that criminal proceedings against fraudulent bankrupts should be defrayed out of the national funds, instead of out of the bankrupt's estate. No doubt, it would be desirable that the parties who undertake criminal prosecutions *bond fide*, with the view of furthering the ends of justice, should be uniformly indemnified against expense, but there does not seem to be any good reason why prosecutions for offences against the Bankrupt Laws should be the subject of any peculiar rule with regard to expenses; and if the proposals of the committee are carried into effect, and plenary power given to the Commissioner and the creditors to punish the bankrupt for fraud and misconduct, we apprehend it can seldom or never be necessary to proceed against a bankrupt by indictment.

To obviate the practical difficulties now arising in establishing an act of bankruptcy upon a summons issued under the 5 & 6 Vict. c. 122, s. 11, it is proposed; 1st, to simplify the notice and affidavit preliminary to obtaining a summons; 2dly, to facilitate the notice of the service of summons; 3dly, to require evidence from the debtor beyond his mere affidavit, of his having a good defence to the creditor's claim; and lastly, to require security by bond with sureties, for the protection of the debtor's property during the interval between the return of the summons and the completion of the act of bankruptcy, and in default of such security, or upon the non-appearance of the debtor, to empower the Court to direct one of its officers to take charge of the debtor's pro-

party. As to the first of these suggestions, the form of the affidavit and notice is prescribed by act of parliament,\* and seems sufficiently simple, but the general rules and orders made for carrying this portion of the act into effect, have become the subject of general and well-founded complaint, and require to be not only simplified but considerably modified. Service of the notice and summons must now be personal; and, considering the serious consequences which follow to a trader who does not appear to a summons issued under the act, it does not seem proper that personal service should be dispensed with, unless in cases where it is proved to the satisfaction of a Commissioner, that the debtor keeps out of the way to avoid service. It is only under circumstances similar to those which justify the issue of a writ of distringas to compel appearance in an action at law, that personal service should be dispensed with in proceeding to render a trader a bankrupt. The proposal to oblige the debtor to give some evidence beyond his own affidavit, that he has a good defence to the summoning creditor's demand, is well deserving of consideration. The form of the affidavit given by the act, (sched. B., No. 2,) operates as a positive encouragement to perjury. The debtor is not required to make the common affidavit of merits, but is only called upon to swear that he "believes he has a good defence to the demand," an affidavit which an unscrupulous and unprincipled debtor can always find abundant excuse for making; and according to the present practice of the Court of Bankruptcy, upon such an affidavit being produced, the summons is not only dismissed, but dismissed with costs, to be paid by the summoning creditor. The proceeding in many cases is a mere mockery. The proposition to require security by bond, with sureties, for the protection of the trader's property, after the summons and before the act of bankruptcy is complete, presents various difficulties. No doubt the interval is often employed by a dishonest trader, in placing his property beyond the reach of his creditors. Still, it must be borne in mind, that the seizure of property by an officer of the Court of Bankruptcy would frequently operate harshly with respect to a debtor who was not insolvent, by preventing him from paying, securing, or compounding with his creditor, and thereby avoiding the commission of an act of bankruptcy. If this difficulty cannot be satis-

factorily provided for, perhaps the interval of fourteen days now allowed between the service of the summons and the completion of the act of bankruptcy, may in certain cases at all events, be advantageously abridged.

The suggestions of the committee to facilitate the administration of insolvent estates in the Court of Bankruptcy, and to remove unnecessary sources of expense and delay, have for the most part our cordial approval, but we are compelled to defer the further consideration of the recommendations which fall under this head, until next week.

## UNNECESSARY ACTIONS PREVENTION BILL.

LORD CAMPBELL has presented to the House of Lords a bill "for preventing the unnecessary multiplication of actions in certain cases," consisting of a single clause, which we print without curtailment. The object of the bill seems to be to give a person standing in the relation of a husband or father, to whom a right of action has accrued for a tort, the right of proceeding in the same action for an injury committed to the wife or infant child of the plaintiff. The law, as we understand it, now is, that if an action be brought for personal suffering or injury to the wife, inflicted during the coverture, the husband and wife must join; but the husband cannot join in this action any cause of action for which he might sue separately. For instance, in an action by husband and wife for an injury done to the wife, the husband cannot recover damages for the loss of the wife's society or assistance, or for the expenses incurred in curing her;<sup>b</sup> but for such consequential injuries he may and ought to sue alone. So, with respect to injuries inflicted on a child of tender age, as the law now stands, the father cannot sue, unless there be evidence to sustain an allegation of loss of service, or the parent has necessarily incurred some consequential expense.<sup>c</sup> The practice in those cases is to sue in the infant's name by guardian for the injury inflicted on the infant, and the parent must bring a separate action for any loss or expense to which he has been put. It must be admitted that this is a state of the law which renders some

<sup>b</sup> *Russell v. Corne*, 1 Salk. 119; *Dengate v. Gardiner*, 4 Mees. & W. 5.

<sup>c</sup> *Hall v. Hollander*, 4 B. & Cres. 660; *Blaymire v. Haley*, 6 M. & W. 55.



amendment desirable. Whether Lord Campbell's bill supplies an effectual remedy our readers shall judge for themselves. To our judgment, it appears that the clause is not very clearly or happily framed. It is as follows :—

"For preventing the unnecessary multiplication in actions in certain cases herein-after mentioned, be it enacted, &c., That when, by reason of any trespass or unlawful act or neglect, a cause of action hath or shall have accrued to any person for some loss or injury to such person, and also another cause of action to such person in respect of loss or injury caused by the same trespass or unlawful act or neglect to the wife or child of such person, such child being under the age of 21 years, it shall not hereafter be necessary to bring more than one action in respect of such several losses or injuries, but the husband or parent shall in such case bring an action to recover damages, not only in respect to the loss or injury to himself or herself by such trespass or unlawful act or neglect, but also in respect to the loss or injury thereby caused to such wife or child; and the jury shall assess the damages separately in respect of the loss or injury sustained by such party; and such plaintiff shall hold such sum of money as he may recover for loss or injury to his or her child as a trustee for such child, and shall pay it over to such child on such child attaining the age of 21 years."

It does not clearly appear, whether the learned framer of the bill intends, that a cause of action accruing to the father in his own right, and another for an injury done to his wife or child, should be contained in the same count of the declaration, or form the subject-matter of separate counts. Nor does the provision which entitles the parent to hold the sum recovered for an injury to his child, until the child attains the age of 21, and then directs it to be paid over, appear to us to be quite satisfactory. Is the fund thus held in trust for an infant to be liable to the payment of interest? and what means are to be taken to enforce payment when the child comes of age? We are not certain that this enactment may not introduce an amount of social mischief and domestic disunion which would more than counterbalance any benefit to be derived from it. At all events, we trust the bill may not pass without further consideration.

#### **SELECT COMMITTEES ON ELECTION PETITIONS.—LAWYERS IN PARLIAMENT.**

THE committees selected for the trial of controverted returns of members to serve

the present parliament, (under the statute 7 & 8 Vict. c. 103,) have nearly concluded their labours, and it must be confessed the result has not been such as to inspire confidence that the purity and independence of the elective bodies may be universally relied upon. In no less than ten instances, brought before committees, have the returns for that number of cities or boroughs been declared void, on the grounds that bribery or treating prevailed to such an extent as to influence and thereby vitiate the elections. That corrupt and illegal practices of this description should be, even temporarily, successful must be deplored by persons of all parties who approve of a representative system of government, but it is consolatory to reflect that the select committees have done their duty impartially and unflinchingly, and that in no instance has it been even insinuated, inside or outside the walls of parliament, that any one of the committees has been influenced in its determination by political or personal feeling, or by any other consideration than that arising from a just appreciation of the important but unpleasant public duty the members of those committees were solemnly pledged to perform.

Without reverting to the period antecedent to the Grenville Act, (10 Geo. 3, c. 16,) it was perfectly notorious, that under the late act, (the 9 Geo. 4, c. 22,) what was familiarly termed "striking the brains out of a committee," was deemed an operation of the greatest importance to the parties, and that it was universally felt, the result depended at least quite as much upon the constitution of the committee as upon the merits of the petition. It is impossible not to feel that the establishment of a tribunal for the trial of election petitions, acting in a judicial spirit, not subject to unworthy suspicions and justly entitled to public confidence, is an improvement upon the former system, which cannot fail in time to elevate the character of the representative body, and indirectly to discourage and repress undue proceedings at elections.

Having directed attention to the most gratifying feature disclosed by the proceedings of the select committees during the present session, we may observe, that the only member of the legal profession who has lost his seat by petition is Mr. John Jervis, who was returned for Horsham. In this case, the zeal of injudicious friends furnished such evidence of illegal treating, that the return was not considered defensible. The petitions against the returns for the

boroughs of Lyme Regis and Kinsale have not been successful in reseating either Sir Fitzroy Kelly or Mr. Watson; for although in the latter case the election was declared void, Mr. Hawes, the late member for Lambeth, and not Mr. Watson, succeeded to the vacant seat. Mr. Hobhouse, a member of the Western Circuit, has been returned for the city of Lincoln upon a vacancy caused by petition, and, except substituting his name for that of Mr. John Jervis, the List of "Lawyers in Parliament," which we submitted to our readers at the close of the general election, has, up to this time, undergone no change, and the total number remains as before.

### SEVERAL ACTIONS FOR THE SAME DEMAND.

THE litigation arising out of the railway mania produced many instances, in which great hardship was occasioned by the multiplication of actions founded on the same subject-matter. Where several parties were jointly liable, and were severally sued, it was frequently impossible for the defendants to plead in abatement the nonjoinder of contractors, because from the number of persons concerned in the proposed undertakings, the affidavit required, under the statute 3 & 4 Will. 4, c. 42, giving the residences of the co-contractors, and stating that they were resident within the jurisdiction, could not be made. Many applications have been made to the Courts of Law during the last two years, on the part of defendants for relief where actions have been vexatiously multiplied, but the Courts, however desirous they may have been to help the defendants, have uniformly held, that where there was no misconduct on the part of the plaintiffs, and no abuse of the process of the Court, they could not interfere to deprive the plaintiffs of an acknowledged legal right.

The question was very fully discussed in a case of *Giles and another v. Tooth*,<sup>a</sup> in the Court of Common Pleas. In that case the plaintiffs claimed a sum of about 1,500*l.* for services alleged to be performed by them in connection with a proposed railway, and brought eleven distinct actions, against as many different individuals, charging them as members of the provisional committee of the projected railway company. Upon an affidavit, showing that the debt

sought to be recovered in these actions was one debt only, and, if due at all, due jointly by the several defendants, the Court granted a rule to show cause, why the plaintiffs should not elect to proceed on one of the eleven actions, and why the proceedings in the other ten actions should not be stayed. When the rule came to be discussed, however, the Court was unanimously and clearly of opinion that it could not be sustained, and that the Court could not interfere to relieve the defendants from the accumulation of costs, without violating established principles. "The mere circumstance," says Chief Justice Wilde, "of the defendants being placed in a situation of hardship, is no ground for depriving the plaintiffs of any rights which ordinarily belong to suitors, unless the Court can see that they have been guilty of improper or oppressive conduct, or that some equivalent can be given to the plaintiffs for the measure of relief afforded to the defendants. It is perfectly competent to the plaintiffs to proceed against any one of the parties separately, unless the defendant so sued can give them the benefit of a better writ against the whole of the joint contractors; and if any difficulty presents itself, it is one that is occasioned solely by the fact of the defendants having entered into so inconvenient a partnership." After observing that the Court could not pronounce any rule for the relief of the defendants which would not operate injuriously to the plaintiffs, or give rise to difficulties in the way of their prosecuting the suit, the learned Chief Justice concluded by saying:—"If there be any great inconvenience or hardship in the present state of the law, resort must be had to the legislature to provide new remedies to meet new combinations of circumstances."

We are rejoiced to learn that the suggestion thus thrown out has been adopted, and that Lord Denman has introduced a bill, now before the House of Lords, the object of which is, to prevent oppressive and vexatious proceedings by bringing several actions for the same demand. We shall find an early opportunity for submitting the provisions of this bill to our readers, and hope to find it affords a remedy for an admitted evil, without injuriously infringing upon the rights of parties who have claims against public companies.

<sup>a</sup> 3 Com. Bench Reports, p. 665.

## REPEAL OF ATTORNEYS' CERTIFICATE DUTY.

WE are glad to observe that the injustice of the Certificate Tax has been taken up by the public press, because thereby, new light will be thrown upon the subject, and ultimately it will be understood, as well by the public, as the legislature.

An able article has appeared in the "Daily News," in which the injustice of the tax is strongly condemned, but the writer is of opinion that the wisest course has not been adopted to obtain redress. He thinks that the attorneys should have associated themselves with the several other classes of the community who are subjected to the payment of an annual licence,—such as pawn-brokers, publicans, pedlars, hawkers, horse-dealers, &c., whose united exertions might have aided the cause of the profession.

The attorneys, however, rest their case upon the ground that they are the only *professional* class subjected to a poll-tax. They urge, that no medical practitioner—whether physician, surgeon, or apothecary, pays any annual impost; nor the clergy—whether bishops, deans, rectors or curates;—nor the army or navy;—nor, above all, the higher branch of the legal profession. Besides these recognized professions, there are various other classes whose income is derived, more or less, from mental rather than bodily labour, such as engineers, architects, and numerous branches of art and manufacture; to which may be added all kinds of brokers, agents, and accountants, and lastly, the host of officers of government and of public companies, and other commercial establishments. None of these classes pay any similar assessment to that of the certificate tax.

It appears by the statement in the Daily News, that the revenue derived from licences, amounts well nigh to 1,100,000*l*. The promoters of the recent meeting would scarcely have been "wise in their generation" if they had just now submitted to the Chancellor of the Exchequer the abolition of this large sum. Their own case is comparatively of moderate amount, and stands upon the simple principle that *one* branch of *one* of the learned professions is alone mulcted. There may, for aught we know, be divers plausible reasons for subjecting pawnbrokers and pedlars to an annual imposition, in return for privileges which they enjoy. We believe, indeed, that although the registration of professions and trades is useful to the public, a small fee to

defray the expense of such registration should alone be paid.

The petition which was agreed to at the public meeting on 22nd March, has since that day remained for signature at the Hall of the Incorporated Law Society, but has not yet been signed by as many of the London profession as might have been expected. It has been suggested that persons should be employed to call at the offices of attorneys and solicitors and obtain their signatures. No doubt a large number of them are so engaged that a walk to Chancery Lane is inconvenient, but as the Hall is open from 9 o'clock in the morning until 10 at night, surely every one might at some time or other record his wish to be relieved from this imposition. It would be a point in favour of the unanimity which prevails on the subject, if every one took that trouble, instead of waiting until called upon at his own office. Every practitioner in the metropolis received a letter informing him of the meeting, and notice has been repeatedly given in the public papers that the petition is ready for signature.

The Bill for the repeal of the tax, we understand, has been drawn and settled by counsel, and a deputation appointed to wait upon a distinguished county member to take charge thereof. The petition should be ready to be presented at the time of introducing the bill, and might probably be intrusted to the same member.

Since last week, petitions for the Repeal of the Certificate Duty have been presented from the following places:—

|             |                        |
|-------------|------------------------|
| Altrincham. | Northamptonshire.      |
| Battel.     | Pontypool.             |
| Bury.       | Society of Staple Inn. |
| Congleton.  | Witney.                |
| Newnham.    |                        |

The number of signatures now amounts to 2,082, besides those represented by the Incorporated Law Society.

The additional members to whom the above or other petitions have been sent, not comprised in our former lists, are:—

|             |             |
|-------------|-------------|
| Mr. Buck.   | Mr. Henley. |
| Mr. Deedes. | Mr. Muntz.  |
| Mr. Hayter. |             |

Amongst the various suggestions for consolidating that important personage, the Chancellor of the Exchequer, we find it is still urged that some substitute should be provided, either wholly or partly, in lieu of the present impost, or that a partial remis-

sion only should be requested. From the means of information we possess, we are satisfied that the proposed increase of the duty on Articles of Clerkship would be generally resisted by the profession, not only on account of its injustice as a tax not levied upon any other class, (except a moderate duty on the amount of premium), but because they are convinced that these stamp duties do not promote the respectability of the members, and that the character and station of the body would be better advanced by appropriating those duties to the better education of articulated clerks previous to their entering the profession and the founding of lectureships and rewards for proficiency.

### COMPULSORY REFERENCES AND COMPROMISES.

WE have for some time deferred noticing an objectionable practice on the trial of causes, which, though not very frequent, ought not to pass without comment. We mean the references and compromises which take place at *nisi prius* and the assizes without the consent of the parties or their attorneys. An instance occurred at the last sittings in the Exchequer, and there was another about a year ago in the Queen's Bench. The practice is more frequent at the assizes, and is adverted to briefly in the first address of the Metropolitan and Provincial Law Association as one of the grievances to be redressed.

There can be no doubt that the majority of references, whether induced at the instance of the Bench or the Bar, are very properly made. Where a case depends upon the investigation of complicated accounts, it is scarcely possible for a jury to do complete justice, and an arbitration is the best course to be adopted, though perhaps the learned members of the Bar are not the fittest persons on all occasions to decide upon the minute details of a long account. But the objection which we hear from various quarters is, that the attorney, on behalf of his client, is not permitted to have a voice in the matter. In 19 cases out of 20, and perhaps in a larger proportion, the attorneys would readily assent to the suggestion of the Court or the advice of their counsel; and that they do so is manifest from the singularity of the instances in which any conflict of opinion arises. Where, however, the attorney withholds his consent, we think it may be safely concluded that he has good reasons for it. The client has a right to

have his cause tried by a jury. He cannot be nonsuited when he is ready to proceed with the trial, and there cannot be a verdict against him before the case is heard.

Some members of the bar, however, contend, that when a brief has been delivered, the cause is in their hands and they may deal with it as they please. They usually, indeed, consult the wishes of their clients, for if they frequently acted in opposition to them, they would have few opportunities of exercising their dominion. According to the record, the attorney is "put in the place" of the suitor, and we think the counsel is bound to follow the "instructions" of the attorney. So far from the counsel who accepts a brief, being entitled to settle, compromise, or refer the cause as he pleases, his retainer binds him to conform to the instructions it contains. He can sufficiently defend himself against an action for defamation uttered in the progress of a cause, because his statement has been made on the authority of his instructions. We do not mean for a moment to doubt that the suitors may safely entrust their interests to the bar; on the contrary, we know that almost universally those interests are implicitly confided to them; but we maintain that there is no necessary surrender by the delivery of a brief of all control over the conduct of a cause.

It may be said that in the present state of business at the assizes and at *nisi prius*, a discretion must be left to the Court to dispose of causes which cannot be properly tried by a jury. We doubt not that the judge, limited to a certain number of days, and desirous of clearing his Cause List, has no other choice than to recommend compromises or references in cases which can be so disposed of. We assume that the Court and the Bar do the best they can in the circumstances; but *there must be no denial of justice* for the sake of any one's convenience. The suitor has a right to have his cause tried. If there be not sufficient time, according to the present arrangements, those arrangements should be altered. A different division of labour might be made. It is scarcely necessary that so many as four judges should sit to hear every point that comes before the Common Law Courts, when a single judge in Equity decides the most important questions. On some momentous subjects the whole force of the Court may be requisite, and an opportunity of appeal allowed. And if justice cannot be administered by the present judges, the number ought to be increased. We are sure that the public

will not grudge any needful expense to secure the due trial of their rights by a jury of the country. Now, however, that causes under 20*l.* are transferred to the County Courts, it may be hoped that time will be left to "hear and determine" the others, with satisfaction both to the suitors and the profession. We know that the feeling of the attorneys and solicitors is very strong and general upon this point; and it appears to correspond with that of the public, whose opinion has been well and powerfully represented in the following article in *The Times* of 12th February.

"A scene which is happily most unusual occurred on Thursday, at the sittings at Nisi Prius in the Court of Exchequer, in Westminster Hall. The occasion was the intended trial of an action for libel, which had proceeded as far as the opening speech of the plaintiff's counsel, who had declared properly enough that his client had no other view than to clear his character, when the defendant's advocate judiciously caught at a suggestion that seemed to hold out a prospect of an amicable arrangement. Everything thus far was quite satisfactory, for it certainly appeared on a *prima facie* view of the matter that mutual concessions afford the most unobjectionable means of settling a dispute. Mr. Serjeant *Wilkins*, speaking in the name of the defendant, grew amazingly cordial, and wanted the intended litigants to 'meet and shake hands.' Mr. *Cockburn* for the plaintiff, though not averse to the compromise, was unwilling that costs should be sacrificed, by his client at least, on the altar of friendship that his learned opponent would have reared. An intimation was thrown out on the one side, and gently repelled by the other, that the expenses ought to fall on the defendant alone. The barristers not being able quite to agree about the matter, left it to the Lord Chief Baron to decide. The judge, after overcoming some little reluctance he had in undertaking the office of arbiter, was at length induced to do so upon his opinion having been asked for by both sides, and his Lordship then proceeded to say that he thought the defendant should be the party to pay all the costs. Nothing could be more pleasant and conciliatory than all that had transpired on the subject up to the point at which we have arrived, but the harmony hitherto prevailing was suddenly interrupted by the attorney for the defendant, who stood up and declared that neither he nor his client had been a party to the proposition of Serjeant *Wilkins*. These impracticable individuals had, in fact, an obstinate repugnance to the process of moulding, which their interests had been undergoing at the hands of the judge and the counsel on either side. Our report tells us, that 'a pause in the proceedings was the result of this unusual course, and astonishment was depicted on every countenance.' The cause of the astonishment, however, was not the

unauthorized compliance of Mr. Serjeant *Wilkins* with an arrangement to which his client objected, but the extreme hardihood of that client in daring to make his objection known. Consternation seized the bench and the bar at the effrontery of this unfortunate attorney in failing to adapt himself instantly to the state of things which had been, somewhat prematurely we think, agreed to in his name, and without his sanction having been obtained. Passing over with a sort of compassionating contempt the audacious individual whose interests were really in question, and who had presumed to interrupt their compromise before his face, the Chief Baron merely told the defendant's counsel that as 'he did not think the attorney had sufficiently considered the matter,' the case might be postponed for a little while. The attorney had, however, 'considered the matter,' and declared that he 'could come to no other conclusion than that the case should be tried.' The Chief Baron taking a different view of the amount of consideration that was necessary on the part of the attorney, determined that he should have more time for making up his mind.

"Any one reading the account of these proceedings might naturally draw the inference that if any one was a fit object of commiseration, it must be the defendant and his attorney, who were being urged to the adoption of a course they did not approve. It seems, however, that Mr. Serjeant *Wilkins* was in reality the individual whose painful position was to be deplored. Mr. *Cockburn* sent forth a refreshing gush of eloquent sympathy to cheer the drooping spirits of his learned friend. 'He,' Mr. *Cockburn*, 'could feel for the painful position in which his learned friend Mr. Serjeant *Wilkins* had been placed by this most unusual and most extraordinary proceeding on the part of his attorney.' Nobody said a word or thought for a moment about the 'painful position' of the poor attorney himself, who, as the agent between the defendant and his counsel, had to restrain the latter from acting in opposition to the wish of the former, and who had been most unmercifully snubbed for hinting that the compromise proposed was one in which the person really interested refused to concur. Mr. *Cockburn*, who, it will be remembered, was on the other side, protested with great earnestness against the interference that had occurred; and the learned counsel seemed really hurt at the idea that an obstinate principal and a persevering attorney should refuse to submit quietly to their fate. Mr. Serjeant *Wilkins* was so grievously affected at the perverseness shown by those who had retained his services, that he saw no other alternative than to withdraw from the cause and leave them in the lurch. 'However painful' it might be to him, there was nothing else to be done. At this there was a 'sensation of approval manifested throughout the court.' Mr. *Cockburn* then became more affected than ever at the accumulated sufferings of his learned friend, and to spare the excruciated serjeant, he, Mr.

*Cookburn*, 'had obtained the authority of the plaintiff's attorney to say that he would only ask for the costs actually out of pocket.'

"We may be excused for expressing a little astonishment that the authority of the plaintiff's attorney should have been required to an arrangement proposed by the plaintiff's counsel, while the authority of the defendant's attorney was looked upon as a thing to be despised, and an attempt to assert it regarded as an offensive intrusion on the Court, as well as an outrage on the feelings of the bar. The *Chief Baron* broke out into a strain of almost enthusiastic admiration with reference to the learned serjeant, 'who,' said the judge, 'must have left the defendant without any counsel at all if the case had proceeded after the course the attorney had adopted.' It appears, therefore, that a defendant must submit to any terms his counsel will agree to, or be liable to abandonment by his advocate after the trial has commenced, and the statement of the plaintiff's case only has been heard. Such a course seems to be required by the honour and dignity of the bar, though many unlearned persons will, we think, cry out against having to pay the price at which these attributes of the forensic station are to be maintained. We admit there is a certain amount of discretion which every advocate may claim the right to exercise consistently with duty to his client, but we do not think this privilege extends so far as to justify the former in a compromise against the consent of the latter, saddling him with costs, forcing from him an acknowledgment of having done wrong, and depriving him of the opportunity of having that question decided by a jury of his countrymen. These are the extraordinary powers Mr. Serjeant *Wilkins* desired to exercise without the authority, and indeed against the expressed wish of his client, whose humbler representative, the unfortunate attorney, was exposed to the concentrated indignation of the Bench and the Bar for venturing to stand up in court and make the defendant's wishes known. He, though nominally the party whose consent to any arrangement was required, should have been a mere cipher in the business if the views of the learned judge and the learned counsel are correct.

"To our merely common-sense powers of comprehension it would appear that Mr. Serjeant *Wilkins* was a little premature in making up his own mind to a compromise without having previously ascertained how far his client would be prepared to make concessions, pecuniary and moral, for the sake of preventing the trial from proceeding after the case against him had been disclosed. We must, however, look upon a plaintiff or defendant as something in the nature of a property given to A. the attorney, for the use of B. the barrister, when in conformity with the statute of uses the whole interest or legal estate passes to B., and A. has not the right to interfere. Such was the mode in which the defendant was disposed of in the trial, or intended trial, that has elicited these remarks. The client was the property to be

dealt with, and A. was the original grantee, but as he held only to the use of B. the latter claimed the entire control."

The attorney having been censured for consenting to his counsel's asking the judge to decide, and for withdrawing such consent after the judge had decided, wrote to the editor, stating that he never in any way consented to the course taken by his counsel, but, on the contrary, distinctly informed him, and so did his client, both before he made the statement which ultimately terminated the case, and whilst he was making it, that the defendant would consent to nothing but that the case should be fully tried.

## PERIODICAL LIST OF NEW BOOKS.

[SOME of the following works have been already reviewed, and others will shortly be noticed.]

•The Life of Lord Chancellor Hardwicke, with selections from his Correspondence, Diaries, Speeches, and Judgments. By GEORGE HARRIS, Esq., Barrister-at-Law. In three volumes. London: Moxon; Stevens and Norton. 1847.

We have delayed, for want of time and space, a review of this valuable work, but shall pay our respects to it before next term.

A Treatise on the Law of Evidence as administered in England and Ireland, with Illustrations from the Laws of America and other Foreign States. By JOHN PITT TAYLOR, Barrister-at-Law. London: A. Maxwell & Son. 1848.

This important work is entitled to a full review, which we hope to bestow during the vacation.

A Compendium of Mercantile Law. By JOHN WILLIAM SMITH, Esq., late of the Inner Temple, Barrister-at-Law. Fourth edition. By GEORGE MORLEY DOWESWELL, Esq., Barrister-at-Law. London: William Benning & Co. 1848.

The respect which is universally felt for the original author of the work, will induce us to examine the merits of the new edition.

A Treatise on the Law of Copyright in Books, Dramatic and Musical Compositions, Letters, and other Manuscripts, Engravings and Sculpture, as enacted and administered in England and America; with some notices of the History of Literary Property. By GEORGE TICKNOR CURTIS, Counsellor-at-Law. London: A. Maxwell & Son. 1847.

This work was noticed at p. 383, *ante*.

Popular Letters on Special Pleading, addressed to those about to enter on the Study of the Common Law. By JOSEPH PHILLIPS, Esq.,

M. A., of the Inner Temple, Special Pleader. Benning & Co. 1848.

We recommend this little Treatise to the careful perusal of every student, and shall take an early opportunity of calling attention to its contents.

The Laws of England relating to Public Health: including an Epitome of the Law of Nuisances, Police, Highways, Waters, Water-courses, Coroners, Burial, &c., relating thereto; with an Historical Review of the Law of Sewers; and an examination of the proposed measure of Sanatory Legislation now before Parliament. By J. TOULMIN SMITH, of Lincoln's Inn, Esq., Special Pleader. Sweet. 1848.

This is a well-timed work, and deserves consideration, but we must weigh well the author's opinion on the proposed bill relating to the public health.

The Synopsis of Summary Convictions; showing, at one view, the Penalties, &c., for 1,300 Offences, when Proceedings must be commenced, what Justices to Convict in each case, &c., with an Introduction, Practical Observations, Forms, and Notes, embodying the entire Law and Practice relating thereto; an Epitome of other matters usually coming before Justices out of Sessions, comprising a full list of Indictable Offences, and where triable, and an abstract of the Juvenile Offenders' Act, with Explanatory Notes, &c. &c. &c. By GEORGE C. OKE, Assistant Clerk to the Newmarket Benches of Justices, Cambridgeshire and Suffolk. Butterworth. 1848.

This work cannot fail to be useful to magistrates, and all engaged in the business which comes before them.

Now and Then. By SAMUEL WARREN, Esq., author of "Ten Thousand a Year," and the "Diary of a late Physician." Blackwood & Sons. 1848.

We gladly embellish our list with this excellent illustration of the defects and excellencies of our system of criminal justice.

An Inaugural Lecture on the Common Law, delivered in the Hall of the Inner Temple. By ROBERT HALL, Esq., Lecturer at Common Law, appointed by the Society of the Inner Temple. 1848.

We refer to a notice of this valuable introduction to the Study of the Common Law, at p. 432, *ante*.

Bankruptcy and Insolvency. Practical Observations, with Notes, Commentaries, and Suggestions, for simplifying and consolidating these Laws, to which are appended some of the leading clauses proposed for that purpose. By JOHN LAIDMAN, Gentleman, Under-sheriff of Exeter, Solicitor in Chancery and in Bank-

ruptcy and Insolvency. London: Stevens & Norton; and L. Laidman. 1847.

This is a very useful pamphlet on the important subject of the much-needed Amendment of the Law of Bankruptcy and Insolvency.

The Palace Court, its Constitution and Practice; with reasons for its immediate abolition, and considerations of the question of Compensation. And an Appendix, containing Letters Patent, Rules of Court, Costs, &c. &c. By SAMUEL ABRAHAMS, Attorney-at-Law. Richards. 1848.

The Scottish Law List, Almanac, and Legal Remembrancer, for 1848. Blackwood & Sons.

## ARRANGEMENT OF BUSINESS AT THE JUDGES' CHAMBERS.

### *Exchequer of Pleas Chambers.*

THE following Regulations for transacting the Business at these Chambers will be strictly observed until further Notice.

March, 1848.

By Order.

Original summonses only must be placed on the file.

The summonses of the day will be called at five minutes past 11 o'clock, numbered, and heard in their regular order, and parties having more than one summons may, when their summons on the file is called, hand in the other summonses, and take consecutive numbers.

Summonses adjourned by the judge will be heard at 11 o'clock precisely, in the order in which they stand on the adjournment file, and those not on that file previous to the numbers of the day being called, will be placed at the bottom of the general file.

Exparte applications (except as mentioned below) will be disposed of immediately after the adjourned summonses.

One summons only to be attended in the judge's room at the same time, whether by counsel or otherwise.

Interpleader applications (except those attended by counsel) will be heard at 1 o'clock.

Counsel at 2 o'clock. The name of the cause to be put on the counsel file, and heard accordingly to number. If the parties are not ready, they will be passed over until the general business of the day is disposed of.

Affidavits upon exparte applications (except for orders to hold to bail) must be left, and the orders applied for the next day;—such affidavits to be properly endorsed with the names of the parties, the nature of the application, and names of the attorneys.

All affidavits produced or referred to in support of any cause before the judge must be endorsed and filed.



## BARRISTERS CALLED.

*Hilary Term, 1848.*

### LINCOLN'S INN.

Robert Grafton Rosseter, Esq.  
Robert Malcolm Kerr, Esq.  
Charles Hansard Keene, Esq.  
Francis Nonus Budd, Esq.  
Reginald John Graham, Esq.  
Henry Robert Vaughan Johnson, Esq.  
Frederick Waymouth Gibbs, Esq.  
Emilius Watson Taylor, Esq.  
The Honourable William Cecil Spring Rice.

### INNER TEMPLE.

28th January, 1848.

Thomas Kingdon Kingdon, Esq.  
Edward Gordon, Esq.  
William Cunliffe Brooks, Esq.  
Edward Samuel Alderson, Esq.  
Thomas Neale Rippingall, Esq.  
Charles George Merewether, Esq.  
Henry Ralph Francis, Esq.  
Henry Barnardiston Raymond Barker, Esq.  
John Thomas Anderson, Esq.  
Charles James Stuart, Esq.  
Thomas Hughes, Esq.

### MIDDLE TEMPLE.

14th January.

Stephen Cracknall, Esq.  
James Hannen, Esq.  
William Carter, Esq.  
Robert Sawyer, Esq.  
William Carmalt Scott, Esq.  
Francis Prujean, Esq.  
George James Edward Brown, Esq.

28th January.

William Houseman Higgin, Esq.  
Edward Rogers Sutton, Esq.  
Robert Byron Miller, Esq.  
Dudley Coutts Majoribanks, Esq.

### GRAY'S INN.

26th January.

Thomas Norton, Esq.

## NOTES OF THE WEEK.

### LAW PROMOTIONS.

Sir David Dundas, Knt., the late Solicitor-General, has been appointed to the office of Principal Clerk of the House of Lords, vacant by the death of Benj. Currey, Esq., who held the office for a short time on the resignation of John William Birch, Esq. It will be recollected that this appointment was formerly held by the Earl of Devon, then Mr. Courtenay, one of the Masters of the Court of Chancery. The salary

at that time was 4,000*l.* a year, and is now 3,000*l.* The honourable and not very laborious duties of the office are, no doubt, better suited to Sir David's state of health than the turmoil of the Bar.

John Romilly, Esq., member for Devonport, the eminent Queen's Counsel at the Chancery Bar, and second son of the late Sir Samuel Romilly, whose memory all men agree in holding in the highest respect, has been appointed Solicitor-General, much to the satisfaction of the profession in general. Mr. Romilly was called to the Bar by the Honourable Society of Gray's Inn, on the 27th June, 1827.

### ANNUAL NUMBER OF ATTORNEYS.

A paragraph has been "going the round of the papers" to the effect, that 600 attorneys are admitted annually. This is computed from the printed lists, but only 400 are examined, and of these about 100 do not enter into actual practice.

## PROGRESS OF LAW BILLS IN PARLIAMENT.

*Royal Assents.*—28th March, 1848.

Passengers by Sea.  
Queen's Prison.

### House of Lords.

#### NEW BILLS IN PROGRESS.

Administration of Oaths in Chancery. Passed.—The Lord Chancellor.

Incumbered Estates Ireland. Re-committed.

Clergy Offences. For 2nd reading.—Bishop of London.

Audit of Railway Accounts.—In Committee. Lord Monteagle.

Amendment of Criminal Law. In Select Committee.—Lord Campbell.

Unnecessary Actions Prevention. For 2nd reading.—Lord Campbell.

Bail by Coroners for Manslaughter. For 2nd reading.—Lord Campbell.

### House of Commons.

#### NEW BILLS IN PROGRESS.

Winding-up Joint-Stock Companies. In Committee.—Mr. Milner Gibson.

Jewish Disabilities Relief. In Committee.—Lord John Russell.

Removal of Poor. In Committee.—Mr. Baines.

Administration of Justice out of Sessions.

(No. 1). In Select Committee.—Attorney-General.

Special and Petty Sessions. In Select Committee.—Attorney-General.

Protection of Justices. In Select Committee.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). In Select Committee.—Attorney-General.

Agricultural Tenant-right. For 2nd reading. Mr. Pusey.

Roman Catholic Relief. In Committee.—Mr. Anstey.

Public Health. Re-committed—Lord Morpeth.

Game Laws Amendment. In Committee.—Mr. Colville.

To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.

Election Recognizances. Re-committed—Mr. Walpole.

Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.

Petty Bag Office.—For 2nd reading. Mr. Romilly.

Stamp Duties Assimilation. For 3rd reading. Mr. Bernal.

Parliamentary Electors Rates.—Sir De Lacy Evans. For 2nd reading.

#### NOTICES OF NEW BILLS.

Vacating Seats of Insolvent Members.—Mr. Moffatt.

Imprisonment before Trial.—Lord Nugent.

To Prevent Bribery at Elections.—Sir J. Pakington.

Game Laws.—Mr. Bright.

Ecclesiastical Courts.—Mr. Bouverie.

Rights of Outgoing Tenants.—Mr. S. Crawford.

Friendly Societies.—Mr. F. O'Connor.

Extending Election Franchise.—Mr. Wyld.

### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### *Halls Court.*

*Edwards v. Winkworth.* March 4 & 11, 1848.

PRACTICE.—FEME COVERT.—EVIDENCE  
IDENTITY.

*Where a bequest is made to a married woman whose husband dies after the institution of a suit for administering the testator's estate, and she marries again, it is necessary, on an application to have the bequest paid to her, to adduce evidence of the death of the first husband and of her identity, although the name of the second husband may have been introduced into the proceedings in the cause.*

THIS suit was instituted for the administration of the estate of John Curnock, the testator named in the pleadings, who by his will, dated in 1830, gave all his property to trustees, upon trust to convert the same, and as to one third part of the produce, to pay the dividends and annual income thereof to his daughter Mary Ann Philp, the wife of Edward Dacon Philp, then residing in the Island of Jamaica, for her separate use for life; and as to the other two thirds, to pay the dividends and annual income thereof to his other two daughters for life in like manner.

At the time of the institution of the suit Mr. Philp was alive, but he died shortly afterwards, and Mrs. Philp then married a Mr. Baker, whose name, without any order, was in the usual manner continued in the proceedings in place of that of Mr. Philp.

The accounts having been taken and the residue of the testator's estate ascertained, the cause now came on for hearing on further directions, and on the petition of Mrs. Baker

and her sisters to have one third part of the dividends of the stock in which such residue had been invested paid to each of them. A question having been suggested as to the proof of Mrs. Baker's identity,

Mr. Miller, for the petitioners, read an affidavit verifying a certificate of the marriage of Mrs. Baker with her present husband, which also contained a general allegation as to the death of her former husband in Jamaica, and which Mr. Miller submitted was sufficient, as it was also proved that she was the party named in the will and in the cause.

Mr. C. Barber for the other parties.

The Master of the Rolls said, he thought the court ought to be satisfied of the death of Mrs. Baker's former husband, but he would allow the petition to stand over, for the purpose of further evidence being adduced.

The petition was mentioned again on a subsequent day, when an affidavit being produced by a party who stated himself to have been intimately acquainted with the surgeon who attended the deceased, but who was since dead, and that the surgeon informed him he had opened the body of the deceased the day after he died, his Lordship made an order accordingly to the prayer of the petition.

#### *Vice-Chancellor of England.*

\* *Druce v. Dennison.* March 3, 1848.

CONSISTORIAL COURT OF LONDON.—BONA  
NOTABILIA.

*On its being shown by affidavit that it was impossible to obtain probate of a will in the Prerogative Court of the Archbishop of*

*its relations.*

*Canterbury, a probate or administration granted by the Consistorial Court of the Bishop of London will be sufficient to obtain the payment of money out of court.*

THE question involved in this case was, whether a probate or administration granted in the Consistorial Court of the Bishop of London, was sufficient to obtain the payment of money out of court without going to the Prerogative Court of the Archbishop of Canterbury for a general probate or administration, and it came before the Vice-Chancellor in June last, Leg. Obs. vol. 34, p. 275, when his Honour, after hearing Mr. Shapter's argument in favour of the diocesan probate, refused to make the order for payment of the money on the diocesan probate, but recommended it to be mentioned to the Lord Chancellor: an application was accordingly made to him, and an affidavit read stating, that it was impossible to obtain from the Prerogative Court of Canterbury a probate of the will in question, inasmuch as that will had been proved, and was deposited in the diocesan court, and the diocesan court would not part with it, it being their opinion that the stock did not constitute *bona notabilia* out of London. The Lord Chancellor then said, that if that difficulty existed there must be a remedy, and he would inquire of the ecclesiastical judges. To day, in a communication to Mr. Shapter, he intimated his opinion, that the Accountant-General should act upon the London probate and transfer the funds.

*Blake v. Mulinger.* Feb. 25, 1848.

PAYMENT OF MONEY OUT OF COURT.—  
MARRIED WOMAN.—ABANDONMENT OF  
WIFE BY HUSBAND.—ESTOPPEL.

*Where a husband had abandoned his wife in the year 1834, and had not since the year 1835 been heard of, Held, that a sum of money in court to which the wife had become entitled, might be paid out to her on her sole receipt.*

IN this case the petitioner, Mrs. Blake, in the year 1834, married her present husband, but within three or four weeks after the marriage he informed her that he had been disappointed in getting an official situation, and was consequently wholly unable to support her, and advised her to return to her family. She accordingly did so, and her father had ever since maintained her. In the year 1835 she received a letter from her husband, without any date, telling her that he was going to the West Indies, and since that time she had received no tidings from him whatever. Mrs. Blake's solicitor had recently gone to Carrickfergus in Ireland, to make inquiries after him, but could discover nothing about him. About a year since Mrs. Blake became entitled, under the will of her grandfather, to a sum of 600*l.* payable on the death of a person entitled to a life interest, the money was in court, and she now presented a petition, praying that under the circumstances

above-mentioned, the money might be paid to her on her sole receipt, although a married woman.

Mr. Heathfield appeared for the petitioner.

Mr. Ackworth for the executor of the will.

The Vice-Chancellor said, that as the husband had acted the part of a dead man, he must take the consequences. He should make the order as prayed.

### Queen's Bench.

(Before the Four Judges.)

*Jones v. Mears.* Hilary Term, 1848.

#### STATUTE OF LIMITATIONS.

*A statement of a party, though made in his own handwriting, that certain sums are due from him to another person, will not, if such statement is unsigned by the party making it, constitute an acknowledgment of a debt so as to defeat the operation of the Statute of Limitations.*

*A., an executor, wrote to B., another executor, a letter, in which he said, "If you have any account against my father," (his testator,) "unsettled, forward the same to my attorney, and, as soon as matters are put a little in order, it shall have my first attention." Held, that this was not an acknowledgment of an existing debt so as to take the case out of the Statute of Limitations.*

IN this case an action of assumpsit had been brought, under a decree of Vice-Chancellor Knight Bruce, to try how far the Statute of Limitations had had the effect of barring the plaintiff from recovering his demand. The action was brought to recover the sum of 7687*l.*, and the declaration contained counts upon promises made by the defendant's testator to the plaintiff's testator, and also by the defendant as executor to the plaintiff as executor. The defendant pleaded, except as to the sum of 29*l.* 6*s.*, the Statute of Limitations, and as to 29*l.* 6*s.* payment into court. The plaintiff took the said sum out of court, and then joined issue upon the plea of the Statute of Limitations as to the rest of his demand. The action was tried before Mr. Justice Wightman, on the 9th of July, 1844, when a verdict was found for the plaintiff, subject to the opinion of the court upon a special case.

The case stated that the plaintiff's testator had been for many years the attorney, and also the receiver of the rents of the defendant's testator; and that, at the time of the death of the defendant's testator, the accounts between the parties remained unsettled. There were two questions raised for the opinion of the court. The first was, whether a statement in the handwriting of the defendant's testator, but not signed by him, that certain sums of money were due from him to the plaintiff's testator, was sufficient as an acknowledgment to take the debt out of the statute. The second question was, whether, supposing the acknowledgment to be insufficient for that purpose, a

letter written by the defendant to the plaintiff, in answer to an application for a settlement of the account between the two testators, would have that effect. This letter contained the words following, viz.,—"If you have any account against my father" (the defendant's testator) "unsettled, forward the same to Mr. Griffith," (the defendant's attorney,) "and as soon as matters are put a little in order, it shall have my first attention." If either of these questions should be decided in the affirmative, the verdict was to be entered for the plaintiff, otherwise for the defendant.

Mr. *Butt*, for the plaintiff. The first point must be given up: the statute positively requires that the acknowledgment shall be signed by the party to be charged, and the want of the signature here is a sufficient answer to the validity of the acknowledgment by the testator himself. But on the second point, namely, the acknowledgment contained in the defendant's letter, the plaintiff is clearly entitled to judgment. The case of *Rendell v. Carpenter* is an authority in his favour. There the words were, "I have expected to receive an account of whatever may be due to you;" and these words were held sufficient to constitute the acknowledgment of an existing debt, and to take the case out of the Statute of Limitations. It is true that the words here are not quite the same, but, if taken in connection with the facts of the case, there can be no doubt that they do amount to an acknowledgment of a debt, and show that the defendant required time to be allowed for some arrangement as to the mode of its liquidation.

Mr. *Coulson*, contra. The letter of the defendant does not admit any debt to exist. It amounts to nothing but an admission that some claim has been made—not that such a claim has been rightly made. The words are such as might have been used by any one who wholly denied the existence of a debt. The words "If you have any account against my father unsettled" show that the writer did not know of any such account, and was asking to be informed on the matter whether any such existed. Nor does he even then go on to say that if there is such an account he will pay it, but he says, "Send it to my attorney, and it shall receive my earliest attention," that is, it shall be considered and examined, all which reserves to the defendant the liberty of denying it and compelling the plaintiff to prove it in the ordinary way. [Mr. Justice *Wightman*. Is there any case in which it has been held that a man's asking if he owed anything was an acknowledgment of a debt?] There is none, and this is no more than asking whether there is a claim against the defendant's testator.

Mr. *Butt*, in reply. The defendant says that if there is "any unsettled account, it shall have my first attention." That form of words is universally understood to amount to a promise to pay. In construing this letter the court must look at the circumstances of the case and

at the usual dealings of men, and if that is done, there can be no doubt that the letter must be construed to mean, "I know that there were accounts between your executor and mine; if any of them should happen to remain unsettled, send it in, and I will pay it as soon as possible." In cases of this kind the letters of parties are not to be construed with the strictness of special pleading, but must receive the construction usually put on such papers in the ordinary business of the world.

Lord *Denman*. The letter may show that there were accounts unsettled, but it does not show on what side was the balance. The case of *Rendell v. Carpenter* was not cited before the Vice-Chancellor, nor do I think it applicable to the present.

Mr. Justice *Patteson*. The Statute of Limitations is a distinct answer to the first point. That is admitted: and I think it is equally an answer to the second point. I do not think that the case of *Rendell v. Carpenter* is in point here, for there the words admitted a debt. Here no admission of that sort is made.

Mr. Justice *Wightman*. It was properly admitted that the unsigned acknowledgment could not be relied on. The case then depends on the letter of the defendant himself, but that does not amount to an acknowledgment of a debt. In *Rendell v. Carpenter* the letter did admit that something was due, but required information as to the amount. Here the defendant admits nothing of the kind. His letter is equivalent to saying, "if you have any unsettled account, send it in, and it shall be considered." That is not sufficient to constitute the acknowledgment of a debt so as to take the case out of the statute.

Judgment for the defendant.

### Court of Exchequer.

*Goodall v. Lansfield*. Jan. 28, 1848.

#### NOTICE OF DISHONOUR OF BILL OF EXCHANGE.—MISDIRECTION.

*Where a bill of exchange is due and dishonoured on Friday, and the required notice of dishonour is sent on Saturday, by post, to a person residing out of the London delivery, it is not sufficient for the plaintiff to prove such notice to have been received by the defendant on the Monday; he must also prove there was no Sunday delivery, if in due course of post it would be delivered on the day after posting.*

THIS was an action by the indorsee against the drawer, upon two bills of exchange, the one dated 5th August, at three months, for 136*l.* 15*s.*; the other dated 9th August, at three months also, for 74*l.* 10*s.* It was admitted at the trial that notice of dishonour of the bill for 136*l.* 15*s.* had not been received by the defendant so as to make him liable. The bill of 9th August became due on the 12th November, and was dishonoured. The clerk of the plaintiff, on the 13th November, (Saturday,) gave

notice of dishonour by letter, which was forwarded by the post, directed to the defendant, at Castleman Villas, Hampstead Road; there being no such place, the letter was sent to Fulham and then to Barnes, and did not reach the defendant before the 15th November, (Monday). Upon this evidence and on this point, Mr. Baron Rolfe, who tried the cause, in summing up said, that the bill becoming due on the Friday, and notice being sent on the Saturday, if received by the defendant on Monday, that would be in time, for if the letter containing the notice had been properly directed and it would have reached him on the Monday, this notice was sufficient. Whereupon the jury found a verdict for the plaintiff for the amount of the bill, 74*l.* 10*s.*

Crowder, for defendant, now moved for a rule to show cause why the verdict should not be set aside and a new trial had, on the ground of misdirection. He contended that it was for the plaintiff to establish his notice. It was incumbent on him to show that there was no post delivery on the Sunday where the defendant resided; this he did not prove, and without such proof the notice, as it perhaps should have reached the defendant on the Sunday, was insufficient.

*Per Curiam.* Take a rule, unless the plaintiff consents to a verdict being entered for the defendant.

#### Court of Bankruptcy.

*In re Bridgland, Ex parte Metzler.* March 24, 1848.

#### PROOF OF DEBT BY SURETY.—PAYMENT AFTER FIAT.

*The debt of a surety subsisting when the fiat issued, but paid subsequently, is proveable*

*against the estate of a bankrupt principal, under the 6 Geo. 4, c. 16, s. 52.*

A creditor named Metzler tendered a proof for 200*l.*, which was objected to on the part of the assignees, and the creditor was examined at some length as to the consideration for his debt. It appeared from his evidence, that in the course of the last year, the bankrupt having been pressed for security for a debt of 200*l.*, induced Mr. Metzler to accommodate him with his promissory note for that amount, payable six months after date. The note was not due at the time the fiat issued, but it since became due, and the amount was paid by Mr. Metzler, who now sought to prove, as a surety who had become liable for a debt of the bankrupt, and had since paid the debt.

Mr. Commissioner Goulburn, (after consulting Mr. Commissioner Fonblanque,) determined that the proof was admissible. The creditor had made himself liable for a debt of the bankrupt's, and was therefore a surety within the 52nd section of the stat. 6 Geo. 4, c. 16. Formerly a surety could not prove a debt for which he was liable as surety, unless the debt had been paid before the bankruptcy, but the act of parliament gave the surety a remedy in such a case. It was expressly held in *Stedman v. Martinent*, 13 E. 427, that the acceptance of a bill for the accommodation of another, made a party a surety within the statute, and the same principle was of course applicable to a promissory note given for the accommodation of the bankrupt. The cases of *Ex parte Lloyd*, 1 Rose, 4 and *Ex parte Yonge*, 3 Ves. & B. 31, were to the same effect. After considering these authorities, and consulting his learned brother, he had no doubt that Mr. Metzler was entitled to prove.

Proof admitted.

### ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

#### Criminal Law.

The previous Sections of this Series of the Digest will be found as follow:—

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Law of Attorneys, p. 42.

Law of Railways, pp. 71, 178.

#### Courts of Equity:

Law of Wills, p. 121.

Construction of Statutes, p. 149.

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#### Courts of Common Law:

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Grounds of Actions and Principles, pp. 396, 415.

Pleading, p. 443.

Practice, p. 465.

Evidence, p. 487.

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#### ASSAULT.

See *Robbery*.

#### BANKRUPT.

*Surrender.*—*A.*, a bankrupt, was indicted for not surrendering to the *district Court of Bankruptcy* at Manchester. The Court was presided over by two judges, Mr. J. and Mr. S., and (practically) comprised two Courts. *A.* was summoned by Mr. J., to appear before the Commissioner, in *her Majesty's Court of Bankruptcy*, at Manchester. It was proved that he had not appeared, pursuant to the said summons at the said Court at all; nor before Mr. J. elsewhere. But there was no proof of his having appeared or not, before Mr. S. elsewhere: *Held*, 1. Proof of non-appearance sufficient. 2. The summons need not aver that

A. had been duly adjudged a bankrupt. 3. Nor that the fiat had been referred to the *Manchester Court of Bankruptcy*. *Reg. v. Deaktry*, 1 Denison's C. C. 287.

#### BIGAMY.

In an indictment for bigamy, where the first marriage was solemnized under the provisions of stat. 6 & 7 W. 4, c. 85, the certificate authorized by that act, and stat. 6 & 7 W. 4, c. 86, s. 38, coupled with the identity of the parties, is sufficient *prima facie* evidence of such marriage. *Reg. v. Hawes*, 1 Denison's C. C. 270.

#### CHURCH RATE.

*Order of Justices*.—In an indictment for disobeying an order of two justices, made under stat. 53 G. 3, c. 127, for the payment of a church rate, an averment, stating, (*inter alia*), *by way of inducement*, that a rate was *duly made* as by law in that behalf required, and that the same was afterwards *duly allowed* as by law in that behalf required, &c., and that the defendant was in and by the said rate *duly rated*, &c., is sufficient, without setting out the facts which constituted the alleged due making, allowance, and rating aforesaid.

2. Such an averment would not be sufficient where it purported to be an allegation of the *matter of the offence itself*, and not merely by way of *inducement*.

3. Where the same count of the indictment, after the above averment by way of inducement, went on to aver (*inter alia*) an information by the proper parties to the justice by whom the warrant was issued, that the said rate was *duly made*, &c., and that the same was afterwards *duly allowed*, &c., and that the defendant was *duly rated*, &c., and that the party refused to pay; such information as above will give jurisdiction to the justices making the order, irrespective of the *truth of the facts* deposed to. And that, therefore, the count would have been sufficient, even had the above averment by way of *inducement* been insufficient or omitted.

4. Under stat. 53 G. 3, c. 127, s. 7, the fact of a rate duly imposed on a party, and the nonpayment of it by such party, are not conditions precedent to the jurisdiction by the justices to make an order for payment; and, therefore, an order purporting to be made on such an information as is above given, would be valid, and could be enforced, whether *de facto* there was a proper rate and a proper demand and refusal, or not.

5. It is sufficient in an indictment to aver that the churchwardens were authorized to collect and receive the rate at the time of refusal, without averring that they were so at the time of the demand.

6. A warrant, (by way of summons,) whereof the mandatory part is substantially set forth, but the inducement merely as follows,—"after making as is therein recited"—is sufficiently such warrant need not be dated.

7. It will be intended in favour of an order,

that the above warrant was served a reasonable time before the day of appearance; as otherwise the justices would have acted unjustly in making the order, which will not be presumed.

8. The order need not be set out, according to the tenor, the substance of it is sufficient.

9. If in the indictment it sufficiently appears by implication that the rate was in force when the order was made, that fact need not be positively averred.

10. *Semble*, under stat. 43 Eliz. c. 2, s. 4, in a special plea by a justice to an action of trespass, it would be enough to state, "a (poor) rate duly made and published, and that the plaintiff was an occupier and rated, and that there was a complaint on oath by the overseer, that he did not pay on demand, and that such fact was proved to the satisfaction of the justice," even though it might turn out, on further inquiry, that there had not in truth or fact been any such demand and refusal as was alleged before the justice. *Reg. v. Bidwell*, 1 Denison's C. C. 222.

Cases cited in the judgment: *King v. Horne*, Cowp. 683; *Rex v. Wright*, 1 Vent. 170; *King v. Wade*, 1 B. & Ad. 861; *Rex v. Soper*, 3 B. & C. 857; *King v. Sainsbury*, 4 T. R. 451; *Lowther v. Earl of Radnor*, 8 East, 113; *Rex v. Fletcher*, 13 Law J., M. Ca. 16.

#### CONSPIRACY.

*Case for the consideration of the judges*.—

Indictment for a conspiracy to cause certain persons to be elected councillors of the borough of Bolton, in Lancashire, by fraud, viz., by procuring certain other persons who were not burgesses of the said borough, and whose names were not in the borough list, to personate voters for the said borough, and to vote for the election of the persons first above-mentioned: *Held*, not to be a subject of consideration for the judges. *Reg. v. Haslam*, 1 Denison's C. C. 73.

#### DATE OF FELONY.

*Deceased struck at one time and place, and death at another*.—Killing with a stick or a stone substantially the same.—Second count of indictment charged J. O'B., that he on 27th May feloniously, and of his malice aforethought, struck deceased with a stick, of which said mortal blow deceased died on the 29th May: that T. R., D. D., &c., on the day and year first aforesaid, at the parish aforesaid, feloniously, and of their malice aforethought, were present aiding and abetting the said J. O'B., the felony last aforesaid to do and commit; and the jurors, &c., say that the said J. O'B., T. R., D. D., &c., him the deceased in manner and form last aforesaid, feloniously, and of their malice aforethought, did kill and murder.

Third count charged T. R., that he on the 27th May, a certain stone, feloniously, &c., of his malice aforethought, cast and threw, &c., with the said stone so cast and thrown struck deceased, of which said mortal blow deceased died on the 29th May: that J. O'B., D. D., &c. (same as above.)

Objection: 1. That the indictment was in-

consistent in charging the principals in the second degree with committing the felony at the time of the stroke, whereas it was no felony till the time of the death.

2. That the general verdict of guilty, left it uncertain which was the cause of the death, the stick or the stone; and that therefore no judgment could be entered on either.

*Held*, 1. The form of the indictment was good.

2. The alleged generality of the verdict immaterial, the mode of death being substantially the same. *Reg. v. O'Brien*, 1 Denison's C. C. 9.

Cases cited: *Warneford's case*, 1 Dyer, 50 b. note; *Wingfield's case*, Cro. Eliz. 739; *Hargrave's case*, 5 C. & P. 170; *Tilley v. Wye*, Cro. Eliz. 176; *Mackally's case*, 9 Co. Rep. 67, a.; *Rex v. Waters*, 7 C. & P. 250.

#### DESTROYING, &c. REGISTER.

*Indictment. — Uncertainty.* — Indictment under 11 Geo. 4 and 1 W. 4, c. 66, s. 20, for destroying, defacing, and injuring a register of baptisms, marriages, and burials.

Objection 1. That there was neither a destroying, defacing, nor injuring within the statutes, because the register when produced had the torn piece pasted in, and was as legible as before.

2. That the indictment was bad for uncertainty, for alleging three distinct and different offences.

3. For not containing an express averment of a *scienter*. Indictment held good on all points. *Reg. v. Bowen*, 1 Denison's C. C. 22.

#### DESTRUCTIVE MATTER.

*Boiling water* is destructive matter within stat. 1 Vict. c. 85, s. 5. *Reg. v. Crauford*, 1 Denison's C. C. 100.

#### DYING DECLARATIONS.

Statements by the deceased held admissible as dying declarations. *Reg. v. Howell*, 1 Denison's C. C. 1.

#### EMBEZZLEMENT.

1. A., assistant overseer of the Preston Union, indicted as servant to the guardians of the union, for embezzling the monies of the guardians: *Held*, under the circumstances, not liable under stat. 7 & 8 Geo. 4, c. 29, s. 47; it not appearing that he received the monies "for, or in the name, or on the account of" the guardians, but of the overseers. *Reg. v. Townsend*, 1 Denison's C. C. 167.

2. Prisoner indicted as servant to guardians, &c. *Held*, 1. That the admission by him contained in the condition of his bond for the performance of his duties as treasurer, coupled with an act of parliament specifying those duties, was sufficient evidence of the nature of his appointment, viz., that he was to receive money for the guardians, and account to them for his receipts. 2. That not accounting for a portion of such receipts was an embezzlement, although no precise time could be fixed at which it was the prisoner's duty to pay over

the money alleged to be embezzled. *Reg. v. Welch*, 1 Denison's C. C. 199.

#### EVIDENCE.

See *Forgery*, &: *Infamous Crime*.

#### FALSE PRETENCE.

A false pretence, knowingly made to obtain money, is indictable, though the money be obtained by means of a contract which the prosecutor was induced to make by the false pretence of the prisoner. *Reg. v. Abbott*, 1 Denison's C. C. 273; *Reg. v. Dark*, ib. 276; *Reg. v. Garlick*, ib. 276.

Case cited in the judgment: *Rex v. Kenrick*, 5 Q. B. 49.

#### FORGERY.

1. *Bill of exchange. — Indorsement.* — A bill of exchange made payable to A., B., C., D., or order, *executrices*. The indictment charged that the prisoner forged on the back of the said bill a certain forged indorsement, which said forged indorsement was as follows: (naming one of the executrices). *Held*, a forged indorsement within the stat. 1 Geo. 4, c. 66, s. 3. *Reg. v. Winterbottom*, 1 Denison's C. C. 41.

2. *Indorsement of a bill by procuration.* — Prisoner, falsely averring an authority to indorse a bill of exchange for T. Tomlinson, writes on the back of the bill, "per procuration, Thomas Tomlinson, Emanuel White." The bill is thereupon discounted, and the prisoner goes off with the money. *Held*, no forgery. *Reg. v. White*, 1 Denison's C. C. 208.

3. Putting an address to the name of a drawer of a bill of exchange, while the bill is in the course of completion, with intent to make the acceptance appear to be that of a different existing person, is forgery. *Reg. v. Blenkinsop*, 1 Denison's C. C. 276.

4. *Cheque.* — A., authorized by B., his master, to fill up a cheque for a certain sum, fills it up for a greater sum: *Held*, a forgery, and that the circumstance of the prisoner alleging a claim on his master for the greater sum, as salary then due, was immaterial, even if true.

Drawer's signature laid as John M'Nicole & Co., proved to be John M'Nicoll & Co., *Held*, no variance. *Reg. v. Wilson*, 1 Denison's C. C. 257.

Case cited in the judgment: *Rex v. Hart*, 1 Mood. C. C. 486.

5. *Order for payment of money. — Intent how laid. — Evidence.* — Prisoner indicted for forging an "order for the payment of money," with intent (in the first count) to defraud "H. D., as one of the public officers of the N. District Bank," (in the second,) to defraud "H. D. and others." The instrument was as follows: — Thornton-le-Moor, July, 20, 1844. Mr. Johnson, Sir, Please to pay to James Jackson the sum of 150, by order of Christopher Sadler, Thornton-le-Moor, brewer, the District Bank. I shall see you on Monday. Yours, obliged, Chas. Sadler.



*Held*, to be an order within stat. 11 G. 4, and 1 W. 4, c. 66, s. 3.

2nd. Whether the intent might be laid as in the second count, *quære*.

3rd. The certified copy of the return forwarded to the Stamp office, under stat. 7 G. 4, c. 46, s. 4, in which it was stated that *H. D.* was one of the public officers of the Y. District Bank, is not made exclusive evidence of that fact. *Reg. v. Carter*, 1 Denison's C. C. 65.

Case cited in the judgment: *Edwards v. Buchanan*, 3 B. & Ad. 788.

6. *Obtaining goods by forged order not a larceny*.—*A.* went to *B.*'s shop, and said he had come from *C.* for some hams, &c., and at the same time produced a note in the following terms:—"Have the goodness to give the bearer 10 good thick sides of bacon and 4 good showy hams at the lowest price. I shall be in town on Thursday next, and will call and pay you. Yours, &c., *C.*" *B.* thereupon delivered the hams to *A.* The note was forged, and *A.* had no such authority from *C.*: *Held*, *A.* was not guilty of larceny. *Reg. v. Adams*, 1 Denison's C. C. 38.

7. *What acts amount to uttering a receipt*—Indictment under stat. 11 G. 4, and 1 W. 4, c. 66, s. 10, for uttering a forged receipt. What acts amount to an uttering. *Reg. v. Radford*, 1 Denison's C. C. 59.

8. *Scrip certificate*.—An instrument professing to be a scrip certificate of the London and South-Western Railway Company, is not a receipt and acquittance, nor a receipt, nor an undertaking for the payment of money within stat. 11 G. 4, and 1 W. 4, c. 66. *Reg. v. West*, 1 Denison's C. C. 258.

9. *Uttering a forged undertaking for the payment of money*.—*Guarantee*.—Indictment under stat. 11 Geo. 4, and 1 W. 4, c. 66, s. 3, for uttering a forged undertaking for the payment of money: *Held*, that the statute applies as well to a written promise for the payment of money by a third person, as to a like promise for payment by the supposed party to the instrument. *Reg. v. Stone*, 1 Denison's C. C. 181.

10. The following forged document held to be properly described in the indictment as a warrant. "To Molineux & Co.: Pay to my order, two months after date, to Mr. John Smith, the sum of 80*l.*, and deduct the same out of my account." There was no signature. Across the document was written "accepted. Luke Lade." It was indorsed "John Smith, farmer, Hailsham, Sussex. *Reg. v. Smith*, 1 Denison's C. C. 79.

11. *Privileged communication*.—Prisoner indicted for forging a will. The forged instrument had been given by the prisoner to his attorney, ostensibly for professional purposes, but in the opinion of the learned judge, with some very different object. An objection that it was a privileged communication, and therefore could not be read: *Held*, invalid. *Reg. v. Jones*, 1 Denison's C. C. 166.

12. *Privileged communication*.—*A.* takes a forged will to *B.*, a solicitor, and asks him to

advance on a mortgage of the property mentioned in the will. *B.* made no charge for the interview, and did not advance the money: *Held*, not a privileged communication. *Reg. v. Farley*, 1 Denison's C. C. 197.

#### ILLEGITIMATE CHILD.

*Presumption of name*.—Indictment stated that the prisoner, a single woman, on the 27th of August, 1844, brought forth a male child alive; that she afterwards, to wit, on the day and year aforesaid, killed the said child. Objection: that the judgment ought to have either stated the name of the child, or that its name was unknown to the jurors: overruled by *Cole-ridge, J.*, at the trial, on the ground that there was no presumption, from the mere fact of birth, that the child had a name, it being a bastard: that the indictment afforded no presumption of its having acquired a name by reputation or baptism: that an averment that the name was unknown, implied the acquisition of some name. Conviction held right. *Reg. v. Willis*, 1 Denison's C. C. 80.

#### INDICTMENT.

*Two counts when transposable*.—*A.* and *B.* indicted for the murder of *C.*, by shooting him with a gun. In 1st count *A.* was charged as principal in 1st degree, *B.* as present, aiding and abetting him. In 2nd count *B.* as principal in 1st degree, *A.* as aiding and abetting. The jury convicted both, but said, that they were not satisfied who fired the gun: *Held*, 1. That the jury were not bound to find the prisoners guilty of one or other of the counts only. 2. (*Maule, J., dissentiente*), that notwithstanding the word "afterwards" in the 2nd count, both the counts related substantially to the same person killed and to one killing, and might have been transposed without any alteration of time or meaning. *Reg. v. Downing*, 1 Denison's C. C. 52.

#### INFAMOUS CRIME.

*Extorting money*.—*Evidence*.—Prisoner was indicted under stat. 7 & 8 G. 4, c. 29, s. 8, (in 1st count) for feloniously accusing *A. B.* of a certain infamous crime, that is to say, &c., with a view to extort and gain money from him: (2nd count) charging the same offence somewhat differently: *Held*, by seven of the judges to five, that the evidence was not sufficient to prove the intent laid. *Reg. v. Middleditch*, 1 Denison's C. C. 92.

#### JUSTICES' ORDER.

See *Church Rate*.

#### LARCENY.

*Money in post letters*.—A letter carrier between *A.* and *B.* is entrusted at *A.* with two directed envelopes, each containing a 5*l.* note, to deliver at *B.* He delivers the envelopes at *B.*, having previously taken out the two notes. Verdict, guilty, but that he had no intention: *Held*, no larceny. *Reg. v. Glass*, 1 Denison's C. C. 215.

And see *Forgery*, 6.

## MISCARRIAGE.

*Intent to procure miscarriage.*—Indictment under stat. 1 Vict. c. 85, for using an instrument with intent to procure miscarriage: *Held*, immaterial whether or no the woman was pregnant at the time of the instrument being used. *Reg. v. Goodhall*, 1 Denison's C. C. 187.

## MURDER.

1. *Mortal wound.*—An indictment for murder by inflicting a mortal wound is supported by proof of a blow, which caused an internal breach of the skin, though externally there were only the appearance of a bruise. *Quere*, whether such an allegation would have been sufficient on the statute for cutting or wounding with intent to murder, &c.? *Reg. v. Warman*, 1 Denison's C. C. 183.

Case cited in the judgment: *Reg. v. Smith*, 8 Car. & P. 173.

2. *Slave trade.*—*Illegal seizure of a Brazilian vessel.*—*Piracy.*—*Jurisdiction of British courts of law.*—On 26th Feb., 1845, the *Feliciade*, a Brazilian schooner, fitted up as a slaver, surrendered to the armed boats of her Majesty's ship *Wasp*. She had no slaves on board. The captain and all his crew, except Majavel and three others, were taken out of her and put on board the *Wasp*. On the 27th Feb., the three others were taken out and put on board the *Wasp* also. Cerqueira, the captain, was sent back to the *Feliciade*, which was then manned with 16 British seamen, and placed under the command of Lieut. Stupart. The lieutenant was directed to steer in pursuit of a vessel seen from the *Wasp*, which eventually turned out to be the *Echo*, a Brazilian brigantine, having slaves on board, and commanded by *Serva*, one of the prisoners. After a chase of two days and nights, the *Echo* surrendered, and was then taken possession of by Mr. Palmer, a midshipman, who went on board her, and sent *Serva* and 11 of the crew of the *Echo* to the *Feliciade*. The next morning Lieutenant Stupart took command of the *Echo*, and placed Mr. Palmer and nine British seamen on board the *Feliciade* in charge of her and of the prisoners (charged in the indictment).

The prisoners shortly after rose on Mr. Palmer and his crew, killed them all, and ran away with the vessel. She was re-captured by a British vessel, and the prisoners brought to this country to take their trial for murder. The jury found them guilty.

On a case reserved for the opinion of the judges, several points were taken by the counsel for the prisoners: the conviction was held wrong. *Reg. v. Serva*, 1 Denison's C. C. 104.

## ORDER OR WARRANT.

*Payment of money.*—The following forged instrument *held*, under the circumstances, to be a warrant or order for the payment of money:—"Mr. Martin will be pleased to send by the bearer 10*l.* on Mr. Hodge's account, as Mr. Hodge is very bad in bed, and cannot

come himself. (Signed,) Martin Ralph, foreman. *St. Austell Foundry.*" *Reg. v. Vivian*, 1 Denison's C. C. 35.

## PERSONATION.

*Municipal Corporation Act.*—*Wilfully.*—The stat. 5 & 6 W. 4, c. 79, s. 34, (Municipal Corporation Act,) makes it a misdemeanor for a Burgess wilfully to make a false answer to any of the questions therein specified. The indictment charged (in the first four counts), that, "the defendant *falsely and fraudulently* answered, &c." *Held*, bad, for omitting "wilfully."

In the two last counts, that the defendant *falsely, fraudulently, deceitfully, and contrary to, and in fraud of the said statute, did personate one J. H.* *Held*, 1. That this was no offence under the statute, no offence so described being specified therein. 2. That it was no offence at common law, either in itself, or as a violation (in effect) of a statutory prohibition, because (if it were) the statute in the same clause created the offence and provided the penalty. *Reg. v. Bent*, 1 Denison's C. C. 157.

## PIRACY.

See Murder.

## POACHING.

1. *Constructive arming.*—Indictment under stat. 9 G. 4, c. 69, s. 9, (against night poaching,) charged A., B., and six others, "that they being respectively armed with guns and other offensive weapons, entered, &c." A. and B. were each proved to be armed with a gun, the other six with bludgeons. Objections: that the averment "other offensive weapons," (not specifying *what*,) made the arming of the other six only constructive, which was not sufficient to bring them within the statute. Indictment *held* good. *Case of Rex v. Davis*, 8 C. & P. 759, overruled. *Reg. v. Goodfellow*, 1 Denison's C. C. 81.

2. *Night.*—Indictment against A. and B. under stat. 9 Geo. 4, c. 69. The offence was committed 4th Dec. 1845, the information before justices and warrant on 19th Dec. 1845. A. was apprehended and committed 5th Sept. 1846, and B. on 21st Oct. in the same year, and the indictment was preferred 6th April, 1847. A question was reserved, whether the prosecution was commenced in time. Conviction *held* right. *Reg. v. Brookes*, 1 Denison's C. C. 217.

Case cited in the judgment: *Rex v. Wallace, R. & R. C. C. 369.*

## POISON.

*What not an attempt to administer.*—An attempt by A. to administer poison to B. through the agency of C., under such circumstances that C. would have been the sole principal felon (had the poison been administered) and A. an accessory before the fact, is not such an attempt as renders A. liable to be indicted under the stat. 7 W. 4, and 1 Vict. c. 85, s. 3. *Reg. v. Williams*, 1 Denison's C. C. 39.

**PRIVILEGED COMMUNICATION.**

*See Forgery, 10, 11; Witness.*

**ROBBERY.**

**Common assault.**—*A.* indicted for a robbery. The jury acquitted him of the robbery, and found him guilty of "a common assault only; *Held*, that such conviction was right under stat. 1 Vict. c. 85, s. 11. *Reg. v. Birch*, 1 Denison's C. C. 185.

**SACRILEGE.**

**Breaking into a church, and stealing a box and money.**—Prisoners indicted for sacrilegiously breaking into a church and stealing a box and money: *Held*, 1. That the box (under the circumstances) was not affixed to the "freehold," but was constructively in the possession of the vicar and churchwardens. 2. That the property was rightly laid in the vicar and others, in their individual names. *Reg. v. Wortley*, 1 Denison's C. C. 162.

**SEAS, HIGH.**

**Indictment for an offence committed on the high seas.**—*What it need not aver.*—An indictment under stat. 7 Vict. c. 2, (for the more speedy Trial of Offences committed on the High Seas,) need not contain an averment that the offence was committed "within the jurisdiction of the Admiralty." *Reg. v. Jones*, 1 Denison's C. C. 101.

**STEALING.**

1. **Cheque.**—Prisoner charged in one count of the indictment with stealing a cheque for 13*l.* 9*s.* 7*d.*; in another count for stealing a piece of paper value 1*d.*: *Held*, that supposing the cheque to have been a void cheque, (as being contrary to the provisions of stat. 55 G. 3, c. 184,) it would still sustain the charge laid in the 2nd count. *Reg. v. Perry*, 1 Denison's C. C. 69.

Cases cited in the judgment: *Rex v. Mead*, 4 C. & P. 535; *Rex v. Vyse*, M. Cr. C. 218.

2. **Oats.**—Prisoners charged with stealing their master's oats. Proved that they took them wrongfully to give to their master's horses, without any end of gain to themselves: *Held*, a larceny. *Reg. v. Privett*, 1 Denison's C. C. 193.

3. **Post letter.**—*A.* servant of *B.* applied for at the post-office, and received all the letters addressed to *B.* She delivered them all to *B.* except one, which she burned. Her motive for destroying it was the hope of suppressing inquiries respecting her character: *Held*, a larceny: and that supposing *lucri causâ* to be a necessary ingredient therein, (which the Court did not admit,) there was a sufficient *lucrum* proved. *Reg. v. Jones*, 1 Denison's C. C. 188.

4. **Post letter.**—Any letter posted in the ordinary way, whatever be its address or object, is a post letter, within stat. 1 Vict. c. 36, ss. 26, 47, and the stealing such letter punishable accordingly. *Reg. v. Gardener*, 1 C. & K. 632, disapproved of. *Reg. v. Young*, 1 Denison's C. C. 194.

5. **Sheep and lamb.**—*Proof of latter will*

*support an indictment for stealing former.*—Prisoner indicted under 7 & 8 Geo. 4, c. 29, s. 25, for stealing "sheep." The jury found that the animal so described was a "lamb." "Indictment held good. *Reg. v. Spicer*, 1 Denison's C. C. 82.

*And see Sacrilege.*

**THREATENING LETTER.**

1. Indictment charged the prisoner with sending a threatening letter to *A.*, the threat therein averred being to burn the house of *B.* *Held*, bad. *Reg. v. Jones*, 1 Denison's C. C. 218.

2. **What is a sending.**—Indictment for sending a threatening letter under stat. 4 G. 4, c. 54, s. 3. First count charged *G.* with sending to *R.* and threatening to burn *R.*'s houses. It was proved that *R.* had only a reversionary interest in the said houses. *Quære*, whether *G.* could be convicted on that count?

Second count charged *G.* with sending to *R.* and threatening to burn the said houses, laying them as the property of *B.*, the tenant. It was proved that *G.* dropped the letter in a public road near *R.*'s house, that *A.* found it and gave it to *H.*, who opened it, read it, and gave it to *E.*, who showed it both to *B.* and *R.*: *Held*, that this was a sending within the statute. *Reg. v. Grimwade*, 1 Denison's C. C. 30.

**WITNESS.**

1. **Privilege.**—If a witness claims the protection of the Court on the ground that the answer would tend to criminate himself, and there appears reasonable ground to believe that it would do so, he is not compellable to answer. 2. If compelled notwithstanding, what he says after such claim must be considered to have been obtained by compulsion, and cannot be given in evidence against him. 3. He is entitled to protection at whatever stage of the inquiry he chooses to claim it; and he is equally entitled to protection, whether he has already answered the question in part or not at all. *Reg. v. Garbett*, 1 Denison's C. C. 236.

2. **Admissible at common law after conviction and before judgment.**—*A.* and *B.* indicted for stealing, *C.* for receiving. *B.* pleaded guilty, and was tendered as a witness against *A.* and *C.* He was objected to by the counsel for the prisoner as inadmissible: *Held*, an admissible witness in common law. *Reg. v. Hincks*, 1 Denison's C. C. 84.

**WOUNDING, FELONIOUSLY.**

**Mare.**—**Malice.**—Prisoner was convicted, under stat. 7 & 8 G. 4, c. 30, s. 16, of "unlawfully, maliciously, and feloniously wounding a mare." Conviction held right. *Quære*, whether, on the ground that by section 25 of the above statute proof of general malice is still sufficient to constitute the offence, notwithstanding stat. 1 Vict. c. 90, ss. 1, 2, 3; or that, it not appearing against whom or what the malice was conceived, malice against the owner or supposed owner would be presumed. (See 2 East, Pl. C. 1074). *Reg. v. Tivey*, 1 Denison's C. C. 63.

# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 8, 1848.

‘Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.’

HORAT.

### BANKRUPTCY AND INSOLVENCY LAW AMENDMENT.

WE make no apology for resuming, without delay, the consideration of the important amendments suggested by the committee of the Metropolitan Association of Merchants, Bankers and Traders, in the Law of Bankruptcy and Insolvency, which has undergone more frequent and extensive alterations of late years than any other branch of jurisprudence, and with more unsatisfactory results.

To avoid unnecessary expense and delay, the committee propose to abolish the fiat, and give the Court of Bankruptcy original jurisdiction to declare a party bankrupt upon proof of the petitioning creditor's debt, the trading, and act of bankruptcy. To this proposal we can suggest no valid objection. The fiat is a mere form, which requires a considerable pecuniary outlay, and affords no additional facilities to the creditors and no benefit to the bankrupt. In fact, it is a mere pretence for extorting enormous fees from the suitors in bankruptcy, and no advantage whatever arises from retaining it. The payments of 20% and 10% respectively, to the secretary of bankrupts' account, under the statute 1 & 2 W. 4, c. 56, ss. 45 & 46, are equally objectionable. As we have already had occasion to remark, they press with great and unequal severity upon small estates, and are wholly indefensible upon principle. The committee properly suggest that they should cease altogether.\*

It is also proposed to alter the mode of remuneration to the official assignees, by giving these officers a liberal commission upon the amount divided, and not, as at present, a per centage upon the amount collected, and a further per centage upon the amount divided. We are not satisfied that the arrangement thus suggested would be either expedient or fair to the assignees. There is frequently great trouble, and no small responsibility, incurred in getting in assets from a bankrupt's estate, which, when realised, are subject to claims that leave a comparatively small residue to be divided amongst the creditors. If the official assignee's remuneration depended upon a per centage on the amount divided, it could hardly be expected that he would expend much labour on getting in a fund which would ultimately yield him a scanty and inadequate compensation. The evil is now felt and complained of by those who have a practical knowledge of the operation of the system. When the bankrupt's estate consists chiefly, or in part, of a great number of small debts, the collection of which would involve some expense, and perhaps require repeated applications, it is not unusual for the official assignees to get rid of the troublesome duty of collecting such debts by assigning them for a consideration, either

misapprehension if they conceive, as it would seem, that the expenses of the Courts of Law and Equity are borne by the state out of the Consolidated Fund. As we have frequently had occasion to observe, this burthen is borne exclusively, and as we contend, unjustly, by the suitor. (See *ante*, p. 492).

A A

\* The committee labour under an entire  
VOL. xxxv. No. 1,048.

to some friend of the bankrupt, or some person who makes a profit by the speculation. It is more convenient and satisfactory to the official assignee to get a percentage on 300*l.* received in one sum from one individual, than upon 400*l.* obtained perhaps, after much trouble and repeated applications, from one hundred different persons. This result, already sufficiently injurious to creditors, and arising from the principle on which the official assignees are now remunerated, would be aggravated by the alteration suggested. Although we cannot concur with the committee that what is proposed in this respect would operate beneficially, it may be freely conceded, that the subject of remuneration to official assignees requires to be reconsidered and the system placed on a different footing. It is enough to state, in condemnation of the existing system, that the rate of remuneration to the official assignees is settled by the respective Commissioners, and that the rate is dissimilar in each of the six Courts sitting under the same roof in Basinghall Street, to say nothing of the country district Courts. A system so anomalous could not exist in any country where the administration of justice was subject to an effective control, or its importance sufficiently considered by the government.

The next recommendation of the committee bears upon what we have always considered a grievous and flagrant injustice, which, under the present practice, offers an irresistible incitement to perjury and duplicity. The first step taken after a trader has been adjudicated a bankrupt is, that an officer of the Court takes possession of the whole of the bankrupt's property, and before he can pass his examination, the bankrupt is required to swear, or to make a declaration equivalent to an oath,<sup>b</sup> that he has given up everything of value he possesses, besides his wearing apparel, to his assignees. Yet the Court calls upon the bankrupt thus divested of his property, to prepare his balance sheet and obtain a certificate *at his own expense*, an expense which in the

smallest cases is never less than 20*l.*, and which ordinarily amounts to a sum between 50*l.* and 300*l.* The farce is frequently gone through, of seeing a bankrupt deliver up, upon his last examination, a watch of little value, or some half dozen of the silver coin of the realm called shillings, when he has paid his accountant 60*l.* or 80*l.* for making up his balance sheet. By the usage of the Court, the balance sheet is required to be made up in a certain form, so complicated and artificial that not one trader in a hundred could manufacture such an instrument of himself any more than he could write a regular epic poem, or a tragedy preserving the unities. Without a balance sheet in the approved form, no bankrupt, however honest or poverty-stricken, is suffered to pass his last examination. He is therefore compelled to call in the aid of an accountant, who may or may not be competent, and who cooks up a balance sheet in which the trader's accounts are as often concealed and mystified as elucidated. We regret to observe that the gross cruelty and injustice of this practice, as it affects the bankrupt, and its demoralising effects, do not seem to have impressed themselves on the committee. What they complain of, and with good reason, is, that "in a very large class of cases the bankrupts' balance sheets are concocted with the intention of concealing fraud and misleading the creditor," and they propose that it should be the duty of the official assignee, who must have possession of the bankrupt's books, to prepare, with the assistance of the bankrupt, this most important document. Let it be prepared by any one competent to perform the duty. If prepared in the offices of the official assignees, we have no doubt it would soon be found that the form now in use might be simplified without disadvantage, and the mischievous mockery put an end to of obliging a bankrupt, professing to have given up everything, to expend a considerable sum in his progress through the Court.

We cannot participate in the anxiety which the committee express, "that the creditors' assignees should have the right to select the official assignee to act under each bankruptcy." The great value of the official assignee, as it seems to us, is, that he stands independently between the creditors and the bankrupt, and therefore, that the Commissioner may rely upon his report as to facts as that of an unprejudiced person. If the assignee were to be chosen by the creditors' assignees, and paid, as he now

<sup>b</sup> By one of the unaccountable freaks of modern legislation, a bankrupt and the wife of a bankrupt are peculiarly privileged in being thought worthy of credit on declaration, when creditors, witnesses, and all other persons are called upon to give testimony under the solemn obligation of an oath. The stat. 8 & 9 Vict. c. 48, expressly provides that bankrupts and their wives shall be examined before the commissioners without being sworn, upon making and signing the prescribed declaration.

is, by a per centage, we should soon see an unseemly competition for the appointment, and the official assignee placed in a position which, at all events, would subject him to the suspicion of recommending himself to the creditors by subserviency. Far better abolish the office altogether, than deprive the holder of that character for impartiality which alone entitles his opinion to respect and confidence.

The proposition of the committee to give the Court authority to nominate the solicitor, in bankruptcies constituted by the debtor himself, is also open to grave objections. It is true, that as the law now permits a debtor to obtain a fiat without the knowledge or assent of any of his creditors, the solicitor suing out the fiat and procuring the Commissioner's adjudication is necessarily selected by the bankrupt. At the first public meeting, however, the creditors choose their assignee, and he appoints the solicitor who works the fiat to the end. If no creditor can be found to take upon him the burthen of an assigneeship, the solicitor suing out the fiat is not displaced; but this state of things seldom or never arises, except when there is a barren estate. Creditors can always be found to accept the office of assignee when there are assets to distribute. No doubt it is an anomaly and an inconvenience, that the solicitor appointed by the bankrupt should in any event have the management and direction of the fiat, but there are many modes of getting rid of the difficulty, without investing those gentlemen, whom Lord Lyndhurst designated as "the irresponsible Commissioners," with a patronage, the exercise of which would be looked upon with well-founded jealousy both by the profession and the public. The system, under which a trader is allowed to become a bankrupt upon his own petition, has no more remote origin than the year 1844, (7 & 8 Vict. c. 96, s. 41). A considerable number of penniless traders have availed themselves of the facilities afforded by this enactment to obtain all the benefits of that proceeding without any of the inconveniences of passing through the Insolvent Court. It may be well doubted, however, whether the cumbrous and expensive machinery established in bankruptcy can ever be advantageously applied in cases where there are no assets to distribute.

We quite concur with the committee in thinking, it would be a most desirable improvement if a greater number of days in the week were devoted by the Commissioners to public business, so that the in-

convenience and loss of time now experienced by creditors in consequence of the number of meetings should be prevented; and we agree with them that it would be expedient if returns were made of the proceedings and results of each bankruptcy, showing the amount of debts and liabilities, and the assets collected and divided in each case. The value of these returns would depend, in a great degree, upon their being made frequently at short intervals.

The proposition also seems most reasonable, that the Court of Bankruptcy should have the same power as the Insolvent Debtors' Court now has, to order periodical payments of the pay, half-pay, and pensions of bankrupts. Our apprehension is, that the committee are not aware how much the power of the Court for the Relief of Insolvent Debtors is restricted in this respect. In point of fact the Court has no absolute authority to appropriate the half-pay or pensions of insolvents. Its authority is only exercised by ordering such portion of the pay or pension of the insolvent as the Court considers equitable to be paid to the assignee, with the consent in writing of the head of the department to which the officer belongs.

The suggestions of the committee with respect to the estates of deceased traders when no executor or administrator is appointed, as well as that relating to compositions and other modes of arrangement with creditors, are not necessarily connected with the Law of Bankruptcy or Insolvency, and will be more conveniently discussed on a future opportunity.

Independently of the changes proposed by the Committee of Merchants and Traders in the administration of the Law of Bankruptcy, it would seem that the Lord Chancellor is turning his attention to the subject. In the course of the last week, his Lordship framed an order, directing that when a fiat issues against a trader whose place of business exceeds 40 miles from London, the Commissioner to whom the fiat is balloted shall hold the meetings under such fiat in or near the place of the trader's residence, instead of at Basinghall Street. If this arrangement could be carried out without additional expense, it might be considered an improvement, but as the Commissioner and his staff, the registrar, official assignee, &c., could not travel to Norwich, or Southampton and back, without some considerable outlay, which must be paid for, either out of the estate of the trader, or out of the consolidated fund, we incline to think that any additional convenience or advantage re-

sulting from the arrangement would be too dearly purchased. The number of fiats issued by or against traders in the metropolitan district residing above 40 miles from London is too limited, and the assets realised upon their estates too small, to require such a change, or to render such an expenditure expedient. We have some reason to think that this has been represented to the Lord Chancellor by those whose opinions on this subject, are entitled to weight, and that the order will not be carried into effect.

## CRIMINAL LAW ADMINISTRATION AMENDMENT BILL.

A BILL has been presented to the House of Lords by Lord Campbell, which we presume is intended to obviate the necessity for an appeal in criminal cases, the right to which it is proposed to establish by a bill now pending in the House of Commons, introduced by Mr. Ewart, and which has already been submitted to our readers. (See *ante*, p. 429.) Lord Campbell's bill is entitled "An Act for the further Amendment of the Administration of the Criminal Law," and the preamble states, that "it is expedient to provide a better mode than that now in use, of deciding any difficult question of law which may arise in criminal trials, at the sessions of the peace or in any court of oyer and terminer and gaol delivery." The bill then proceeds to enact:—

"That where any person shall have been convicted of any felony or misdemeanor before any court of sessions of the peace, the court may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the judges, or judge, if only one, of the superior courts of common law at Westminster who shall be in the next commission of oyer and terminer and gaol delivery for the county or place where such court is holden; and the court thereupon shall have authority to respite execution of the judgment on such conviction, or to postpone the giving of judgment until such question shall have been considered and decided; and in either case the court shall remand the person convicted to prison in the meantime, if he was actually in custody in prison at the time of trial, or if he was previously under recognizance of bail, and surrendered to take his trial in pursuance thereof, the court shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as it shall think fit, conditioned for the person convicted to appear, at such time or times as the court shall direct, and receive judgment, or to render himself in execution upon such judgment, as the case may be."

tions reserved are to be certified to the judges of assize. It is as follows:—

"That the recorder or presiding justice shall, after the court shall have reserved any question of law, certify under his hand the question or questions of law which the court shall have so reserved, with the special circumstances of the case upon which the same shall have arisen; and the clerk of the peace or his deputy shall send such certificate, with a transcript of the record, certified under his hand, annexed thereunto, to the clerk of assize or his deputy, for the purpose of being brought before the said judges or judge; and the said judges or judge, or one of the said judges, shall have full power and authority to hear and determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or presentment so brought before them, or to avoid such judgment, and enter a verdict of not guilty instead of a verdict of guilty, or to arrest the judgment, or to direct the court of sessions of the peace to give judgment, if no judgment shall have been before given, as the said judges or judge shall be advised thereon, or make such other order as justice may require; and the judgment of such judges or judge upon such question or questions shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case should be argued; and the judgment so given, and the direction, if there be any such, of the judges or judge, as the case may be, shall be certified by the clerk of assize or his deputy, under his hand, to the clerk of the peace or his deputy, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of the peace or his deputy, in the form, as near as may be, or to the effect mentioned in the schedule annexed to this act, with the necessary alterations to adopt it to the circumstances of the case, shall be delivered or transmitted by him to the gaoler in whose custody the person convicted shall be; and such certificate shall be a sufficient warrant to such gaoler, and to all other persons, for the execution of the judgment of the court of sessions of the peace, if the judgment shall have been affirmed; and execution shall be thereupon executed on such judgment, or for the discharge of the person so convicted from further imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such gaoler shall forthwith discharge him, and also the court of sessions of the peace shall vacate the recognizance of bail, if any, at the next session; and if the court of sessions of the peace shall be directed to give judgment, the said court shall proceed in due manner to give judgment at the next session: Provided, that if the said judges or judge shall think fit they or he may refer the question or questions stated for their opinion to the justices and barons, as hereinafter-mentioned, in like manner as if such

The 2nd section provides how the ques-



judges or judge had originally reserved the same for the opinion of the said justices and barons: Provided also, that if, instead of a judge or judges of one of the superior courts of common law at Westminster, some other commissioner or commissioners shall act under the next commission of oyer and terminer and gaol delivery for the county or place instead of a judge or judges, it shall be lawful for such commissioners or commissioner to act in the same way, to all intents and purposes, as such judges or judge of the said superior courts might have done under and by virtue of this act."

The 3rd section merely enacts, that questions reserved by the sessions in London and Middlesex, shall be certified to the Central Criminal Court for the opinion of the judges of the superior court acting at the next session of the Central Criminal Court.

The 4th section provides, to what judges reserved questions of law shall be submitted, in places which have sessions but have not usually commissions directed to a judge or judges of the superior courts.

The 5th section enacts, that after conviction, in cases of treason, felony, or misdemeanour, at any court of oyer and terminer or gaol delivery, the judge, at his discretion, may reserve any question of law for the consideration of the justices of either Bench and the Barons of the Exchequer, and may respite execution or postpone judgment until such question has been decided, and may either remand the accused or take bail for his appearance, as the case may require.

The 6th section provides in detail how the reserved questions are to be stated by the judges. The following is the mode suggested:—

"That the judge or commissioner shall thereupon state, in a case signed by him in the manner now usual, the question or questions of law which he shall have so reserved, with the especial circumstances upon which the same shall have arisen, and such case shall be transmitted by him to the said justices and barons; and the said justices and barons, or six of them at the least, of whom the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or two of such chiefs at least, shall be part, being met in the Exchequer Chamber or other convenient place, shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and enter a verdict of not guilty instead of a verdict of guilty, or to

arrest the judgment, or order judgment to be given thereon at some other session of oyer and terminer or gaol delivery, if no judgment shall have been before that time given, as they shall be advised, or make such other order as justice may require; and the judgment or judgments of the said judges and barons shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued, in like manner as the judgments of the superior courts of common law at Westminster are now delivered; and such judgments and order, if any, shall be certified under the hand of the presiding chief justice to the clerk of assize or his deputy, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize or his deputy, in the form, as near as may be, or to the effect mentioned in the schedule annexed to this act, with such alterations as aforesaid, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, if such judgment shall have been affirmed; and execution shall be thereupon executed upon such judgment, and for the discharge of the person convicted from further imprisonment, if the judgment shall be reversed or arrested, and in that case such sheriff or gaoler shall forthwith discharge him, and also the next court of oyer and terminer and gaol delivery shall vacate the recognizance of bail, if any; and if the court of oyer and terminer and gaol delivery shall be directed to give judgment, the said court shall proceed to give judgment at the next session: Provided, that where any question or questions reserved by the court of sessions of the peace shall be afterwards reserved for the opinion of the justices and barons, as herein-before mentioned, the judgment or order, if any, shall be certified, under the hand of the presiding chief justice, directly to the clerk of the peace or his deputy, and such proceedings shall be thereupon had as if the case had been adjudicated upon by a judge being a commissioner of oyer and terminer and gaol delivery."

The subsequent clauses merely provide that the case or certificate referred to in the preceding clauses, may be sent back for amendment by direction of the appellate judges; that where judgment is reversed on writ of error, the record may be remitted to the court below for judgment; and declaring the forgery of the certificate or copy already alluded to, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, a felony.

Although this bill may, and undoubtedly would, be a desirable improvement on the existing law, it is very different in principle

and detail from those bills which have given the right of appeal in criminal cases. By this bill the appeal in every case is in the discretion of the court or judge. If the presiding judge has no doubt on any question of law which arises, although the legal advisers of the prisoner may entertain the greatest doubts, the bill is inapplicable. So likewise, where the law does not suggest any doubt, but the facts to which the law is to be applied are doubtful or uncertain, Lord Campbell's bill is wholly inoperative. Again, when a doubtful question of law arises depending on facts, the judge is to state the circumstances as they strike him, without the obligation of consulting the parties, or of inserting in the case submitted for the opinion of the appellate tribunal any fact which in his judgment may not be deemed material.

It is quite obvious that this arrangement is wholly different from a right of appeal, and that a multitude of cases might be suggested, where an appeal would be essential to the purposes of justice, and where this measure would be inoperative. Still, we readily concede that any measure giving the magistrates at sessions the power of reserving difficult questions of law arising in criminal cases, for the opinion of the judges, is a decided improvement.

### THE AMENDED PUBLIC HEALTH BILL.

THE clauses which have been added in the committee on this bill seem to meet most of the objections which have been made to this important plan of sanitary improvement. In particular a very large share of government is preserved to the local board:—as large as it appears would be consistent with due supervision. It will be recollected that the objects are to secure an effectual supply of water, sewerage, drainage, and paving. The act is to be put into operation after a *public* inquiry upon petition of not less than 50 inhabitant householders, (s. 8). And, except for the essential purpose of public or main sewerage, the consent of the council of corporate towns is necessary to put the powers of the act into force, (s. 10).

The town councils are to be the local boards, and where parts of the district are not included in the corporation, a selection is to be made from the rate-payers, (s. 12).

The following are the new clauses:—

Members elected for part of a sewerage dis-

trict to constitute separate board for other purposes of the act.

Local board of health to be appointed, in case of a district afterwards becoming a corporate borough.

Committees may be appointed for effecting certain objects.

Officer of health to be appointed.

Maps to be prepared exhibiting system of sewerage.

Power to purchase, &c. certain sewers.

Public necessities to be provided.

Power to compel paving, &c. of private streets.

Width of new streets, 35 feet.

Purchase of property of existing waterworks companies. Instructions to arbitrators.

Payment of purchase-money upon sale of waterworks, &c.

Market price of shares to be given in certain cases.

What shall be a good discharge for consideration.

Waterworks to vest in local board.

Limitation of time for compulsory purchase.

Previous agreements as to sale of waterworks not to be disturbed.

Proportion of private improvement rate may be deducted from rent.

Redemption of special district and private improvement rates.

Composition for and recovery of rates upon tenements under the annual value of 10*l.*, &c.

Power to reduce or remit rates on account of poverty, &c.

Estimates before making rates.

Notice of rate.

Commissioner may make advances to local boards, 5 Vict. c. 9, sess. 2.

Money may be borrowed at low rates of interest to pay off securities bearing a higher rate.

Power to borrow money to pay off former mortgages.

Bye laws to be printed, &c.

Certain powers of trustees, &c. under local acts, to cease within districts under this act, and local acts so far as they relate to such powers to be repealed. Power to save and adapt local acts, &c. to this act. Proceedings and liabilities before repeal to stand. Liabilities to be satisfied out of property formerly liable thereto if sufficient, but if insufficient, then out of general district rate. Application of surplus.

All powers under certain local acts may be transferred to local boards. Power to extend certain local acts to parts not already subject thereto.

Time within which award must be made.

Compensation in case of damage by local board.

Sewers, &c. of commissioners of sewers and private water-courses not to be used, &c. without consent.

Local board may allow owners time for repayment of expenses.

## THE ANNUAL CERTIFICATE DUTY.

THE diversities of opinion are so great, that it is too much to expect unanimity on any subject. There is no truth, however generally recognised, but has some infidel opponent; there is no historical event but has some doubter either of its actual existence, or the circumstances attending it, or the cause or the motive which produced it. Lawyers in particular are prone to question everything: their vocation is to raise doubts and find out defects. We must therefore not be surprised that the measures adopted for the repeal of the certificate duty should give rise to a host of objections—some direct and open, like one of our correspondents of to-day, who opposes the measure *in toto*; others expressing hesitatingly a dislike to the *time* selected, or “hinting a fault” in the *mole* of proceeding. Some hold that the application is too late for this session, others that it is too soon. One says that the Finance Minister should not be hurried, another that he is not sufficiently pressed. Some contend that the proceeding ought to be by a resolution of the House, others by a separate bill. One party is for a reduction only of the tax, another for a substitution of other taxes. But, doubtless, the large majority urge a total repeal.

It thus appears that whoever undertakes the business of any proposed legislation for the benefit of the lawyers, will have some difficulty in giving satisfaction. But whatever that difficulty may be, it will not exceed what has been experienced in other professions. Thus, the medical men obtained a parliamentary reference of their grievances to a special committee—numerous witnesses were examined—a large blue book was published, and bills brought in, but the questions still remain unsettled. “The battle is not to the swift.” Let it not be said that the practitioners in the law are unreasonable in asking the attention of parliament to their particular grievances, nor too nicely criticise their mode of seeking redress.

Something has been said regarding the number of persons present at the recent general meeting of the profession. Three thousand were invited, and three hundred, it is asserted, only attended. We will not quarrel about the number, whether three or five hundred. But it must not be inferred that the rest were indifferent. Doubtless they relied that a sufficient number would be present to show the feeling of the profession and pass the requisite resolutions. The difference of opinion which took place

on one of the propositions bearing on educational improvements, was of no moment to the general question, and the opposition given to the resolutions intended to take the business out of the hands of the Council of the Incorporated Law Society shows the confidence reposed in that body for its zeal and discretion.

We recollect that in the early part of the session of last year, a small fire of petitions was kindled by persons unacquainted with the opinions of the profession, but the pressure upon the finances of the country by the partial famine of that year, induced the attorneys both in town and country generally to abstain from any appeal to parliament. On the opening of the present session, when an additional two per cent. on incomes was proposed, the solicitors as well in the country as in town were roused to action. A deputation arrived purposely from the Manchester Law Association, and co-operating with the Incorporated Society, proceeded to the Chancellor of the Exchequer, and subsequently it was agreed to prepare a bill for the repeal of the duty, in order to obtain the sense of the House upon the question.

After these steps had been taken, a considerable number of London solicitors in extensive practice, (interested more for the body at large than for themselves,) deemed it expedient to take the opinion of the profession in general, and the Council of the Incorporated Law Society, on that suggestion, convened the meeting for the 22nd March.

Thus far there seems to have been no time lost and no undue haste, and it was strongly expressed at the meeting that the practitioners in general were much indebted to the leading members for the exertions made in their behalf.

The course to be pursued is manifest. The bill will be brought in and printed, and an opportunity taken to ascertain the opinion of the House on the principle of the tax. The question cannot be brought on before Easter. In the meantime the clauses of the bill require consideration, and the honourable member who will bring it forward must have an opportunity of considering the facts and circumstances connected with the tax. We hear that some persons, willing to blame what is not done by themselves, are impatient that the bill is not already on the table of the House. They may rely it is in good hands, and no unnecessary delay will take place.

Since last week, petitions for the repeal of the impost have been presented from several additional places. The total number of signatures is 2,384, including 153 names appended to 14 petitions from individual solicitors, exclusive of the cities and towns already mentioned. The following are the additional places referred to :—

|                   |                   |
|-------------------|-------------------|
| Axminster.        | Knaresborough.    |
| Bury St. Edmunds. | King's Lynn.      |
| Bromyard.         | Ledbury.          |
| Burslem.          | Midhurst.         |
| Blackburn.        | Maldon.           |
| Chipping Camden.  | Newcastle Emlyn.  |
| Crickhowell.      | Oldham.           |
| Clitheroe.        | Ottery, St. Mary. |
| Doncaster.        | Peterborough.     |
| Flint.            | Portsea.          |
| Halstead.         | Poole.            |
| Holywell.         | Stow.             |
| Hexham.           | Stratton.         |
| Ipswich.          | Worcester.        |

In the Report on Public Petitions of 23rd February, the number of Petitions for the Repeal of the Tax is stated to be 20 ; but it was considerably more. The number now is upwards of 160. From 13 towns there have been two petitions, and from two towns three petitions each. We shall give a complete list in time for the second stage of the bill.

The following are the names of the members who presented petitions, to be added to our former lists :—

|                |                  |
|----------------|------------------|
| Mr. Bradley.   | Mr. Hudson.      |
| Mr. Buck.      | Earl Jermy.      |
| Sir E. Buxton. | Mr. Oct. Morgan. |
| Mr. Colville.  | Mr. Sheridan.    |

We have also received the names of several other members to whom applications have been made to support the bill when brought in.

## DEFENCE OF THE CERTIFICATE DUTY.

*To the Editor of the Legal Observer.*

SIR,—The repeal of this impost has now become a topic of professional, if not of impolitic, agitation, and the prominence which is given to it *as such*, is one of those characteristic signs of the times, respecting which there are such conflicting opinions.

Many years have elapsed since you commenced the advocacy of the repeal, and opened your columns to my lucubrations against it, since which great changes have not only been made in the profession, but in my own views and feelings respecting it ; but I have not changed my opinion respecting the certificate duty, although as one of the minnows of the profession it falls heavily upon me ; but I do not feel degraded by its imposition, and cannot

help regarding the discovery that I should be so, as one of the most wonderful phenomena of modern times.

The impetus which has been given to the repeal will, it appears to me, be wholly unavailing, inasmuch as the tax *cannot be dispensed with*, nor can I help thinking but that any attempt to coerce the government into a compliance by the adoption of a vulgar career of agitation would be incompatible with the character and forethought of a profession which prides itself upon being A 1 in respectability.

That the *public and the profession* have reason to complain of the continuance of the duty on a lease for a year, it is apprehended, cannot be disputed ; and had the same extent of agitation been resorted to upon that topic as is now stirred up against the Certificate Duty, it might have been successful, and if so, a boon to *both* would have been obtained.

As regards the origin of the tax and the injustice of its continuance, but little can be said on either score which will not sadly militate against the political morality of the present day—suffice it to say, that it has been a profitable tax ; and that it has been readily acquiesced in, is evident from the increased number of the profession, since the period of its first imposition.

That the profession has shared in the vicissitudes of the times, and is now over-stocked, is admitted, but not so much so as to prevent an influx of persons voluntarily offering themselves to share in those vicissitudes ; and although a decrease is said to exist latterly, no financier will ever give up such a profitable source of revenue, or one which is so generally approved of by the immense majority of the non-professional and tax-paying public.

That the attorneys have *STILL* a great influence in the country, and if they were to band themselves together in certain districts, might return their man, is not disputed—but in throwing out the suggestion that they should do so, has it not been forgotten that in acting upon it, they would be arraying themselves against the general public, and giving countenance to theories and practices which had better be kept out of sight ?

The existence of licensing duties may furnish a specific argument for a general remodelling of the income tax, which, as far as regards all licences, is presumed to be erroneous ; but the total repeal of only one of those duties, and that the most important, appears upon the face of it to be manifestly unjust, although a more equitable adjustment of the whole of the Stamp Laws might doubtless be advantageously made, not only as regards the revenue and the public, but also the profession ; respecting whose real practical operations, with all humility be it written, the leviathans who lately assembled in the Hall of the Law Institution are as imperfectly acquainted as an assemblage of titled lords and dames with the privations and crosses of the poor tribe of shirt-makers.

I will not trespass further on your columns, being fully persuaded that the time has not

arrived when plain truths may be freely spoken, and I greatly fear that it will not do so until it is too late.

X. Y. Z.

### COUNSELS' CLERKS' FEES.

SOME doubts having existed whether the practice which prevails in the Courts of Queen's Bench and Exchequer, is also adopted in the Common Pleas, relating to the amount of allowance of Counsels' Clerks' Fees, application was recently made to the Masters of the Court by the Council of the Incorporated Law Society, to ascertain the scale of allowance there adopted; and the Council have been informed, that the Masters of the Court of Common Pleas had determined to conform to the practice of the other Courts, and to allow upon the scale set forth in the Book of Rules and Orders, published by the Law Society, at p. 80 of such book, viz. :—

On briefs, cases, &c. :

| Upon a fee of      |           | £ | s. | d. |
|--------------------|-----------|---|----|----|
| 1 guinea and under | 5 guineas | 0 | 2  | 6  |
| 5 —                | 10 —      | 0 | 5  | 0  |
| 10 —               | 20 —      | 0 | 10 | 0  |
| 10 —               | 30 —      | 0 | 15 | 0  |
| 30 —               | 50 —      | 1 | 0  | 0  |
| On 50 —            | —         | 1 | 5  | 0  |

And above 50 guineas, the Taxing Officer is to use his discretion.

On consultations :

|  |   |   |   |   |    |   |
|--|---|---|---|---|----|---|
| Senior clerks  | - | - | - | 0 | 7  | 6 |
| But if the room is paid by the party, the clerk's fee is - |   |   |   |   |    | - |
| Junior clerk   | - | - | - | 0 | 5  | 0 |
| On general retainer  | - | - | - | 0 | 10 | 6 |
| On common retainer   | - | - | - | 0 | 2  | 6 |
| On conference  | - | - | - | 0 | 5  | 0 |

### STAMPS ON TRANSFERS OF MORTGAGE.

THE attention of the Council of the Incorporated Law Society has recently been called to the decision of the Court of Exchequer in the case of *Humberstone v. Jones*, (16 Law Journal, Exch. N. S. pt. 2, 293,) by which it was determined that a deed stamp is requisite on the transfer of a mortgage, where any additional security or power is inserted in the deed.

This decision being contrary to several previous authorities, and considerable doubt and inconvenience being likely to result therefrom, the Council directed application to be made to the Solicitor of Stamps and Taxes to ascertain whether there was any intention on the part of the government to revise the Stamp Act, or whether a declaratory act would be sanctioned,

for the purpose of removing the existing doubts.

We understand that no instructions have yet been given to revise the Stamp Act, but that, in consequence of the decision in *Humberstone v. Jones*, the Lords of the Treasury have authorized the Board of Stamps to remit the penalty on affixing an additional stamp in cases included in the principle of that decision; and a remedy for the defect being thus provided, a declaratory act is deemed unnecessary.

This information will probably be acceptable to the solicitors in the country who are engaged in mortgage transactions, and the Council have therefore communicated the result to the several Provincial Law Societies for the use of the members of the profession.

### NOTES OF THE WEEK.

#### THE NEW SOLICITOR-GENERAL.

MR. JOHN ROMILLY was re-elected member for Devonport on Monday last, the 3rd instant, without opposition.

#### CLERK ASSISTANT OF THE HOUSE OF LORDS.

John George Shaw Lefevre, Esq., was appointed to this office on the 4th instant, in the place of Benjamin Currey, Esq., deceased.

It was reported that Sir David Dundas, the late Solicitor-General, had been previously appointed and had accepted the office, but there seems to have been some misunderstanding on the subject. There is no mistake as to Mr. Lefevre, for he has been regularly gazetted, and doubtless will prove himself a very efficient officer.

#### SPECIAL CONSTABLES FOR KEEPING THE PEACE.

Some danger being apprehended from the intended "Monster Meeting" on Monday the 10th inst., followed by a procession to the Houses of Parliament with the chartists' petition, large numbers of special constables have been enrolled in most, if not all, of the metropolitan parishes. In our own locality, the Liberty of the Rolls, several meetings have been held, and a large proportion of the inhabitants have promptly come forward to assist in the protection of property.

The Law relating to Riots and Unlawful Assemblies will be found in our Number for 18th March, p. 469, *ante*.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Anon v. The Irish Great Western Railway*  
Jan. 12, 1848.

23RD ORDER OF MAY, 1845.

*It is not necessary in limiting the time for answering, on the service of a subpoena out of the jurisdiction, under the 23rd Order of May, 1845, to state that the time limited is for pleading, answering, or demurring, not demurring alone.*

IN this case some of the defendants resided in Ireland, and application was made to serve them with a subpoena under the 23rd Order of May, 1845. The court having limited six weeks as the time within which the defendants were to answer, a question was raised as to the wording of the order, whether it ought to provide, as the old orders for time to answer used to do, that the defendants should have six weeks within which to plead, answer, or demur, *not demurring alone*, or whether this latter limitation was unnecessary.

Mr. Kindersley, Mr. Anderson, and Mr. Turner, appeared for the different parties.

Lord Langdale expressed his opinion that the 10th section of the 6th Order of May, 1845, sufficiently showed that a defendant demurring alone must do so within 12 days after appearance, and therefore, that the words suggested were not necessary.

## Vice-Chancellor of England.

*Foster v. Macgregor.* Feb. 25, 1848.

INFANT.—GUARDIAN.—MARRIED WOMAN.

*A feme sole being a guardian and trustee of a fund in court for two infants subsequently married; held, that the dividends of the fund might be paid to her on her sole receipt, the husband giving an undertaking that the money should be properly applied for the benefit of the infants.*

UNDER the will of Mr. Foster two parties, infants, were entitled to one-sixth each of a sum of 2,000*l.*: being infants, the money had been paid into court, and by an order the dividends were directed to be paid to their mother for their maintenance and education. Their mother had lately married a person of the name of King, and

Mr. Heathfield now presented a petition that the dividends might be paid to Mrs. King on her sole receipt. There was an affidavit of the marriage in support of the petition, and

The Vice-Chancellor said, he would make the order, upon Mr. King giving an undertaking that the money should be properly applied for the benefit of the infants.

## Queen's Bench.

(Before the Four Judges.)

*The Queen v. Phillips and another.* Sittings in Banc after Hilary Term, 1848.

RATEABILITY OF LITERARY AND SCIENTIFIC INSTITUTIONS UNDER THE 6 & 7 VICT. c. 36.

*By stat. 6 & 7 Vict. c. 36, (an act to exempt from rateability land and buildings occupied by literary or scientific societies,) the purpose of the society, the contributions, the absence of profits, the law of such society against dividends, and the certificate of the barrister, are conditions in equal degree to the right of exemption, and the claim of right may be defeated on the default of any one of the conditions, and the presence of one raises no presumption against the absence of any or either of the others.*

*A society, in order to claim exemption under this act, must have a law prohibiting any division of profits among its members.*

*The certificate of a barrister unappealed against is only a condition precedent to the claim of exemption, and not conclusive proof of the right.*

A CERTIFICATE, dated the 9th of November, 1843, was granted pursuant to the statute 6 & 7 Vict. c. 36, stating that certain premises in the occupation of a society called the Birmingham News Room Society were not liable to be rated to the relief of the poor. The rules of the society and certificate were duly enrolled at the quarter sessions on the 6th January, 1844, and exemption from rates claimed on the 8th of February following. No appeal was entered against the certificate under the sixth section of the act. Three separate rates were subsequently made for the relief of the poor, each of which included the premises specified in the certificate. There was no appeal against these rates, and the amount claimed being unpaid, application was made to two justices to grant distress warrants, which they refused to do. A writ of mandamus issued, to which the magistrates made a return setting out the facts of the case.

The pleas were,—1. That at the time of making and allowing the said rates the said society was not a society instituted for purposes of science or literature exclusively. 2. That at the said time when, &c., the said society was not supported by annual voluntary contributions. 3. That at the said time when, &c., the said society was not one which by its laws might not make any dividend, gift, division, or bonus in money unto or between any of its members. At the trial before Lindal, C. J., at the Lent Assizes, 1846, for the county of Warwick, a verdict was found for the Crown, subject to a case.

The society occupy a news room, where many of the periodical publications and usual newspapers of the day are taken in for the perusal of the subscribers. It is supported by

the annual subscriptions of the members at the rate of two guineas each. There was no positive rule of the society prohibiting the division of any dividend among its members. No surplus of receipts over expenditure has ever arisen, but the total receipts are exhausted by the expenses of the establishment.

The defendants contended, that under the statute the certificate of the barrister unappealed against was conclusive evidence that the society was entitled to exemption from the payment of rates. The prosecutors contended that the certificate was not conclusive, and that the claim of exemption ought to have been raised by appeal against the rates. If the court shall be of opinion that the defendants have established the claim of the said society to be exempted from the payment of rates, the verdict found for the Crown is, in that case, to be set aside on all such of the issues as the court shall think fit, and a verdict entered on such issue or issues for the defendants; otherwise the verdict found for the Crown to stand.

Mr. Miller, for the Crown. The statute 6 & 7 Vict. c. 36, enacts, that any society instituted for purposes of science, literature, or the fine arts exclusively, may be exempted from rateability, provided such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members, and provided also, that such society shall obtain the certificate of the barrister as specified by the act. These are separate conditions, and must all be complied with before any society can claim exemption. The nature and object of the society is not such as was contemplated by the statute. *Regina v. Pocock*,<sup>a</sup> *Regina v. Jones*.<sup>b</sup> The certificate of the barrister is not conclusive, it only forms one of the conditions specified by the act. In *Welsh v. Nash*,<sup>c</sup> an order of magistrates, confirmed on appeal, was disputed in an action of trespass. In order to show exemption the society should have appealed against the rate. *Marshall v. Pitman*.<sup>d</sup>

Mr. Mellor, contra. The barrister is to make the inquiry whether the society is entitled to the benefit of the act, and if he finds that it is, the general rule of law recognised in *Aldridge v. Haines*<sup>e</sup> applies, that, if the barrister acted within the scope of his authority, the certificate is conclusive as to the truth of the facts so ascertained. In *Regina v. Bolton*<sup>f</sup> and *Mould v. Williams*,<sup>g</sup> the court held that where a person has jurisdiction to enter upon an inquiry, they will not inquire whether his conclusions in the course of it are true or false. In *Regina v. Hickling*,<sup>h</sup> an order of justices under the Highway Act was held to be conclusive as to the facts found, and that they could not be disputed on an indictment for non-repair. The constitution of this society shows that no

division of profits can take place. [Lord Denman, C.J. There is nothing to show that it is impossible that there should be any division of profits among its members.]

Mr. Miller was heard in reply.

Gur. ad. vult.

Mr. Justice Coleridge now delivered the judgment of the court.<sup>i</sup> At the time this case was argued the court intimated an opinion that, upon the facts without the certificate, the society did not appear to be instituted for the purpose of science or literature exclusively, nor to be supported in part by annual voluntary contributions, nor to be a society that might not by its laws make any dividend or profit. The case for the society was then rested on the effect of the certificate of the barrister, which was contended to be conclusive, either as the decision of a tribunal or commissioner having jurisdiction over the question, or as a decision made conclusive by the statute. Upon examining the statute, the certificate appears to us to be made a condition precedent to the claim of exemption, but not to afford conclusive proof of the right. The first section exempts from rateability persons occupying a building for the purpose of science, literature, or the fine arts exclusively, provided it shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make dividends among its members, and provided such society shall obtain the certificate of a barrister. The purpose of the society, the contributions, the absence of profits, the law against dividends, and the certificate are conditions in equal degree to the right of exemption. Under this section, the claim of right of exemption may be defeated on the default of any one of these conditions, and the presence of one raises no presumption against the absence of any or either of the others. As the making a dividend at any time would defeat the right of exemption which had existed, it is absurd to suppose that a past certificate could be treated as conclusive proof that a future dividend should not exist. Nor is the certificate rendered conclusive by the sixth section, which gives an appeal from the decision of the barrister granting it to any person assessed to the rate, and giving notice of the grounds of appeal, and empowers the court to annul the certificate, and makes the determination of the court upon those points binding and conclusive upon all parties to all intents and purposes whatsoever.

In the first place, there has been no appeal against this certificate, and the section does not apply. Moreover, in the case of appeal, the inquiry is confined to the ground stated in the notice of appeal, and the decision is confined to the annulling or not on those grounds. If it is annulled, that is conclusive; if not, the certificate remains as valid as before the appeal. The ill consequences of holding that a certificate which has not been annulled on appeal,

<sup>a</sup> 2 New Sess. Cas. 372. <sup>b</sup> Id. 387.

<sup>c</sup> 8 East, 394.

<sup>d</sup> 2 Bar. & Adol. 395.

<sup>e</sup> 5 Q. B. R. 409.

<sup>f</sup> 9 Bing. 595.

<sup>g</sup> 1 Q. B. R. 66.

<sup>h</sup> 7 Q. B. R. 880.

<sup>i</sup> This case was argued Nov. 10th, 1847, before Lord Denman, C.J., Coleridge, Wightman, and Erle, J's.



when one ground of objection only has been taken by an appellant, should therefore be conclusive proof of the right of exemption for all time, against all persons, and notwithstanding other objections, make it improbable that parliament intended to give it that effect. The words do not express such an intention, and the determination by the sessions that a certificate shall not be annulled on account of the alleged objections may be conclusive as to them, and the certificate may fulfil the conditions required, so far as they are declared untouched by the grounds of appeal, without having the effect of either fulfilling the other conditions, or being conclusive in respect to them.

The fifth section of the act gives an analogous appeal in case of refusal of a certificate by the barrister, and makes the final filing of the rules of the society by order of the court of quarter sessions to have the same effect as if the barrister had certified. That is the effect a certificate has, if it is not annulled on appeal under the sixth section, but no conclusive effect is given to such judgment on appeal. Therefore, we are of opinion that the claim of exemption is not sustained by the certificate, nor by the other facts of the case, and it follows the verdict must be for the Crown on all the issues.

Judgment for the Crown.

### *Exchequer.*

*Goldsworthy v. Strutt.* Jan. 14, 1848.

#### LIQUIDATED DAMAGES OR PENALTY.

*Where parties covenant that certain acts, from the performance of which uncertain and unequal damages may arise, shall not be done by the one, or he shall make payment to the other of 1,000*l.*, as "liquidated damages, and not as a penalty," the court will not reject the words "liquidated damages," though the actual damage sustained be but trifling.*

*Aliter, where the covenant is for the nonpayment of a sum certain.*

*Whether the words "liquidated damages" may be rejected, is, however, a question of construction in all cases.*

In this case the plaintiff and the defendant had been in partnership as attorneys. On the 19th January, 1841, arrangements were made by which the partnership was dissolved, and Strutt entered into an agreement not to carry on business within 50 miles of Ely Place, or solicit or influence in any way any of the clients of the co-partnership, or to pay 1,000*l.* as liquidated damages and not as a penalty.

An action was subsequently brought by the plaintiff against the defendant for a breach of this agreement, in which the defendant pleaded payment into court of 50*l.* and no damages *ultra*. The plaintiff replied, damages *ultra*, upon which issue was joined.

The cause subsequently went down to trial,

when a verdict was entered for the plaintiff for 950*l.*, subject to a motion to enter a verdict for the defendant, if the court should be of opinion that the 1,000*l.* should, under the circumstances, be regarded as a penalty.

The *Attorney-General* now moved for a rule to show cause why the verdict should not be entered for the defendant. Where, as in this case, there may be several breaches of the agreement, and the injury resulting from some of those breaches may be very trifling, and from others very important, the law will not allow the sum stated in such agreement to be regarded as liquidated damages, even though it be expressly stated to be so by the parties. The words "stipulated damages" in this case must therefore be rejected. Where there are several things to be done, or not to be done, the parties must stipulate for each separate act, and not for the whole collectively. By the construction sought to be put upon this agreement, if the defendant influences any one client he is liable to the full sum of 1,000*l.*, and so on for every client whom he may influence, but he may carry on the business within 50 miles for ever, and it is but one breach. [*Parke, B.*, observed, that in all cases it was a question of construction upon the whole instrument.] There cannot be two rules of construction for the same covenant. [*Alderson, B.* In some cases it might be an absurdity to assess the damages according to the literal construction; for instance, where a penalty is consequent upon the nonpayment of a certain sum of money, to pay a much larger sum would be absurd; but when it is not for a specific payment, surely the party must be supposed to have estimated the value of any loss at the amount specified.] It certainly is very necessary there should be some fixed rule. [*Platt, B.* How is this case distinguishable from *Rawlinson v. Clarke*, 14 M. & W. 187?] In that case the penalty was for doing a certain act; there were various modes of doing it, and the penalty was for doing the act either of the different ways. He cited *Kemble v. Farren*, 6 Bing. 141; *Boys v. Ancell*, 5 Bing. N. C. 395; *Green v. Price*, 13 M. & W. 701; *Beckham v. Drake*, 8 M. & W. 846; *Horner v. Flintoff*, 9 M. & W. 681.

*Parke, B.* In this case if the defendant sets up in business within 50 miles of Ely Place, or solicits or influences in any way any of the clients, then he stipulates that he will pay in any one of those cases 1,000*l.*, and he is not under any circumstances bound to pay more. We cannot say what damage a man sustains in any particular case, and in order to avoid any question the parties are competent to make any regulation they may think fit. Here the parties, I think, stipulated for the payment of the sum of 1,000*l.* in any of the events mentioned. The doctrine that the words "liquidated damages" may be rejected is not supported by the case of *Kemble v. Farren*; there Lord Chief Justice Tindal, in giving judgment, says,—“It is undoubtedly difficult to suppose any words more precise or explicit than those used in the agreement; the

same declaring, not only affirmatively that the sum of 1,000*l.* should be taken as liquidated damages, but negatively also that it should not be considered as a penalty or in the nature thereof. And if the clause had been limited to breaches which were of an uncertain nature and amount, we should have thought it would have had the effect of ascertaining the damages upon any such breach at 1,000*l.*" That is exactly this case. His lordship then goes on to observe,—“For we see nothing illegal or unreasonable in the parties, by their mutual agreement settling the amount of damages, uncertain in their nature, at any sum upon which they may agree. In many cases such an agreement fixes that which is almost impossible to be ascertained, and in all cases it saves the expense and trouble of bringing witnesses to that point.” Here the stipulation for 1,000*l.* was an exposition of the intention of the parties. In *Green v. Price* I put the same interpretation on *Kemble v. Farren*. There the argument proceeded upon the absurdity of paying 1,000*l.* for the nonpayment of 3*l.* 6*s.* 8*d.* In this case, although the damages may be different if the business should be interfered with at different times, still as the parties have agreed that in any of these cases the 1,000*l.* should be paid, I think they are bound by that amount. This is in fact a question of construction.

*Alderson, B.* It is in all cases a question of construction upon the whole of the instrument; where the damage is definite, and where the sum also is definite, if the parties set a much larger sum, it is not reasonable that they could have intended it, as, in *Kemble v. Farren*, it would be unreasonable to hold that the parties really intended to pay 1,000*l.* for a breach by the nonpayment of 3*l.* 6*s.* 8*d.*; and in the case of *Beckham v. Drake* it is not reasonable to suppose the intention to have been to pay 500*l.* upon

failing to pay 3*l.* 3*s.*; in such cases the damages stated must be taken as the extreme amount; but if there is an uncertainty as to the amount of damages, where is the absurdity in the parties fixing the sum for the breach of either or all the covenants? Therefore, where the parties say that in the case of a breach of either they shall pay 1,000*l.*, this is not unreasonable. The damages may vary; in some cases they may be great, and in some small; here in either case they agree as to the amount of the damages, yet if found by the verdict of a jury, the amount would be different; this the parties have endeavoured to prevent by fixing the amount. If the parties in *Kemble v. Farren* had expressly stated that upon the breach of 3*l.* 6*s.* 8*d.* the penalty should be the payment of 1,000*l.*, I am not prepared to say that would not have been binding. In *Rawlinson v. Clarke* the agreement was, that the defendant would not in any way carry on the profession of a surgeon and apothecary, or either of them, by residing or visiting any patient within three miles from his then place of business, and that 500*l.* was to be the amount of damages for acting in either capacity in either of the ways mentioned. There the damages sustained were estimated by the jury at 7*l.* 7*s.*, and yet the court held the damages properly assessed at 500*l.* for the same reasons as were stated by the court in *Green v. Price*.

*Platt, B.* There is no ground for altering the distinct words of the agreement. The intention of the parties was clearly, that in the event of any of the breaches taking place, the liquidated damages should be 1,000*l.* This case is not distinguishable from *Rawlinson v. Clark*.

*Pollock, C. B.*, agreed with the rest of the court.

Rule refused.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Bankruptcy.

The previous Sections of this Series of the Digest in the present volume will be found as follow:—

Registration of Voters' Appeals, pp. 15, 347.  
Law of Attorneys, p. 42.  
Law of Railways, pp. 71, 178.  
Costs, p. 197.

### Courts of Equity:

Law of Wills, p. 121.  
Construction of Statutes, p. 149.  
Principles of Equity, p. 222.  
Pleading, p. 241.  
Practice, p. 268.  
Evidence, p. 299.

### Courts of Common Law:

Construction of Statutes, p. 373.  
Grounds of Actions and Principles, pp. 396, 415.

Pleading, p. 443.  
Practice, p. 465.  
Evidence, p. 487.

### House of Lords:

Appeals, p. 507.

### Criminal Law, 523.

### ACT OF BANKRUPTCY.

*Notice.*—Notice that a trader has filed a declaration of insolvency is notice of an act of bankruptcy at that moment, if a fiat afterwards issues within two months. *Green and others v. Lawrie and others*, 35 L. O. 121.

### ADJUDICATION.

*Construction of 5 & 6 Vict. c. 122.*—The five days allowed in the stat. 5 & 6 Vict. c. 122, s. 23, for disputing an adjudication, are to be calculated exclusive of Sunday, even if Sunday should not be the last of such five days. *Re Bruce and Morrison*, 35 L. O. 103.

## AFFIDAVIT.

1. An affidavit, sworn, but not signed, was allowed to be taken off the file, for the purpose of being signed, upon an undertaking that it should be refiled, after being signed, without any alteration. *Ex parte Norton re Robinson*, 34 L. O. 280.

2. *Title of the Court.*—Affidavits by country creditors to support proofs of debts, must be entitled "In the Court of Bankruptcy in London." If the words "in London" be omitted the affidavits will be rejected. *Ex parte Hyams*, 34 L. O. 548.

3. *Execution of bond.*—A Commissioner will not approve of a bond given under the stat. 1 & 2 Vict. c. 110; s. 8, unless the trader-debtor, at the time the bond is submitted for approval, produces an affidavit of execution by the sureties. *Lancaster and Preston Fire and Life Insurance Company v. Davis*, 35 L. O. 177.

See *Trader Debtor's Summons*, 2.

## ANNULLING FIAT.

See *Petitioning Creditor*.

## APPRENTICE.

*Allowance for fee.*—*Held*, That the 6 Geo. 4, c. 16, s. 49, which authorises a Commissioner to order a sum to be paid out of a bankrupt's estate, on behalf of an apprentice, only applies when the fiat operates as a discharge of the indentures of apprenticeship.

*Semble*, That when a fiat issues against a jewel-case maker, who also carries on the business of an architect, the fiat does not discharge the indenture of an apprentice to the business of an architect. *In re Hummon, Ex parte Davison*, 35 L. O. 464.

## ARREST.

*Surrender in discharge of bail.*—A party who, under the 8th section of statute 1 & 2 Vict. c. 110, executes a bond, and has a verdict given against him, and who afterwards has a fiat issued against him, to which he surrenders and then renders in discharge of his bail in the bond, is not entitled to his discharge under the 23rd section of the statute 5 & 6 Victoria, c. 122. *Ex parte Oldaker, re Oldaker*, 35 L. O. 504.

## ASSETS, MARSHALLING.

See *Mortgage*.

## BAIL.

See *Arrest*.

## BENEFIT SOCIETY.

*Proof of debt.*—To entitle a friendly society to the advantages conferred by the act 4 & 5 W. 4, c. 40, in proving against a bankrupt's estate, it must appear that the bankrupt became indebted to the society by virtue of some office or employment. *In re Brodie and Brodie*, 35 L. O. 373.

## BILL TRANSACTIONS.

A bankrupt who has carried on an extensive business by discounting bills and accommo-

dation bills, cannot be considered to have conducted himself properly as a trader, and is not entitled to his certificate immediately. *In re Quincey*, 35 L. O. 220.

See *Proof of Debt*, 1.

## BOND.

1 & 2 Vict. c. 110.—A Commissioner to whom a bond is submitted under the 1 & 2 Vict. c. 10, will not enter into an investigation as to the nature or validity of the debt.

When the sum sworn to exceeds 2,000*l.*, the bond should be for 1,000*l.* beyond the sum sworn to, but a bond in a smaller amount may be entered into with the consent of the debtor. *In re Brodie, Ex parte King*, 35 L. O. 414.

And see *Affidavit*, 3; *Trader Debtor's Summons*, 1.

## CERTIFICATE.

The Court will not entertain a bankrupt's application for his certificate, when no trade assignee has been appointed. *In re Phillips*, 35 L. O. 506.

## CONTINGENCY.

See *Proof of Debt*, 2.

## COSTS.

See *Official Assignee*.

## COVENANT.

See *Lien*.

## EXAMINATION.

*Committal for unsatisfactorily answering.*—A bankrupt will not be allowed to be brought up for re-examination, except at his own expense, after having been twice examined and committed for unsatisfactory answers, when there are grounds for expecting a satisfactory examination. *Re Rothery*, 35 L. O. 63.

## FRAUD.

See *Lien*, 1.

## INSPECTION OF BOOKS.

The Court will not permit the solicitor for a creditor, who has not proved his debt, to inspect the bankrupt's books, unless it be clearly for the benefit of the estate. *In re Grylls and others*, 35 L. O. 332.

## LIEN.

1. *Fraudulent removal of goods.*—A bankrupt who had given a lien on certain goods, by fraud obtained possession of them, and rendered them undistinguishable by mixing them with other goods of the same sort, but the Court gave effect to the lien to the extent of the goods or their value. *Ex parte Bell, in re Tunstall and Cash*, 35 L. O. 93.

2. *Covenant, satisfaction of.*—A bankrupt having covenanted to buy a house and settle the same to certain uses on his marriage, or to invest a sum to effect such a purchase, did not either buy the house or make the investment within the time limited. He afterwards bought a house for a larger sum, and then mortgaged that and other property which had been devised to him, and became bankrupt. The mortgage money came into the hands of the assignees. *Held*, that the money covenanted to

be laid out formed a lien on that mortgage money, and was to be satisfied out of so much of the same as represented the house bought by the covenantor, and that the remainder, if any, was to be a charge on the equity of redemption of the property devised to him. *Ex parte Poole, in re Symes*, 35 L. O. 368.

MARSHALLING ASSETS.

See *Mortgage*.

MORTGAGE.

*Stock-in-trade. — Distress for rent. — Marshalling.*—A trader had mortgaged his stock-in-trade and goods; he retained possession and added to his stock. The landlord distrained for rent, and sold part of the goods, and then the trader became bankrupt: *Held*, that the mortgagee was only entitled to the remaining furniture and stock that existed at the time of the mortgage: *Held*, also, that the mortgagee had a right, as against the assignees, to the benefit of the doctrine of marshalling. *Ex parte Stephenson, in re Stephenson*, 35 L. O. 326.

NOTICE.

See *Act of Bankruptcy; Trader Debtor's Summons*, 1.

OFFICIAL ASSIGNEE.

*Omission. — Costs.*—A proof of a debt having been made and a dividend declared, but the name of the creditor having been omitted in the dividend list, whereby the whole estate had been divided among the other creditors, the official assignee was held to be personally answerable for the amount of the proof to which the creditor would have been entitled had his name been included in the list, and for the costs. *Ex parte Hall, in re Carey*, 34 L. O. 599.

PETITION.

See *Service of Petition*.

PETITIONING CREDITOR.

*Annulling fiat. — Petitioning creditor out of the jurisdiction.*—Where the petitioning creditor's debt is not proved, and he resides out of the jurisdiction, and the solicitor to the fiat declines to appear for them in an action, the fiat will be annulled with costs. *Ex parte Wightman and Collier, in re Wightman and Collier*, 35 L. O. 344.

PROOF OF DEBT.

1. *Security by drawer of bill.*—Where the drawer of a bill deposits security with a party discounting, and the acceptor becomes a bankrupt, the holder may prove against the estate of the bankrupt acceptor without giving up the security deposited by the drawer. *In re Willis*, 35 L. O. 267.

2. *Payable upon contingency.*—*Held*, by Commissioners Evans and Shepherd, (Fane dissentiente,) that when the bankrupts gave an indemnity bond, but no default had taken place, and no debt was in fact due at the date of the fiat, there was no contingent debt proveable within the meaning of the stat. 6 Geo. 4, c. 16,

s. 56. *Ex parte Meyer, in re Meyer and Brown-smith*, 35 L. O. 441.

3. *Surety. — Payment after fiat.*—The debt of a surety subsisting when the fiat issued, but paid subsequently, is proveable against the estate of a bankrupt principal, under the 6 Geo. 4, c. 16, s. 52. *In re Bridgland, Ex parte Metzler*, 35 L. O. 523.

See *Benefit Society*.

RAILWAY ACT.

The purchase money of an estate taken by a railway company (the estate tail in which was subsequently barred) was ordered to be paid out of Court to the person formerly tenant in tail, but no costs were given as against the company. *Ex parte Thoroton, in the matter of the Midland Railway Company*, 35 L. O. 343.

RENT.

See *Mortgage*.

REVIEW, COURT OF.

Orders made by the Court of review previous to its abolition, are not by the statute 10 & 11 Vict. c. 102, prevented from being executed. *Ex parte Norton, re Robinson*, 35 L. O. 344.

SERVICE OF PETITION.

A petition by some of the directors of a railway company, and which was served on the petitioning creditor and official assignee, seeking to annul a fiat issued against the company after its dissolution under the provisions of the act 9 & 10 Vict. c. 28, was ordered to stand over, that service of it might be made on others of the directors who did not coincide in the view of the petitioners. *Ex parte Morrison, in re the London and Birmingham Extension Railway Company*, 35 L. O. 64.

SURETY.

See *Proof of Debt, 3: Trader Debtor's Summons*, 3.

TRADER DEBTOR'S SUMMONS.

1. *Sufficiency of notice. — Sufficiency of bond.*—A notice accompanying affidavits of sufficiency by sureties need not state that the sureties are housekeepers or freeholders. When a bond proposed to be given under the stat. 1 & 2 Vict. c. 110, in addition to the ordinary condition prescribed by the statute contained the words, "or shall be released by the plaintiff in such action:" *Held*, that these words were surplusage, and did not invalidate the bond. *In re Glover*, 34 L. O. 614.

2. *Affidavit of good defence to part, without admitting residue.*—An affidavit to which the defendant deposes to a good defence as to part only of a debt, and makes no admission as to the residue, is not in compliance with the provisions of the statute 5 & 6 Vict. c. 122, and amounts to an act of bankruptcy on the part of the debtor. *Nicholson v. Pink*, 35 L. O. 14.

3. *Sufficiency of sureties.*—The objection that one of the sureties to a deed given by a debtor under the stat. 1 & 2 Vict. c. 110, if a member of parliament, is not necessarily fatal. *Haller v. Lee*, 35 L. O. 42.

|                     |                                |                            |                                 |
|---------------------|--------------------------------|----------------------------|---------------------------------|
| Jno. Lewis          | Moon (stayed)                  | Connop                     | Pro. Lewis                      |
| Thomas M. Parker    | Clerk (inj.)                   | S. J. Hughes               | Pro. Burrell                    |
| Ablett              | Neal                           | Neal (inj.)                | Pro. Carlon and H.              |
| Oliverson and Co.   | Doe d. Peacock                 | S. J. Frere                | Eject. Vizard and Co.           |
| Everest and Co.     | Clutterbuck                    | Carter, (inj.)             | Pro. Bell                       |
| Wontner             | The Queen                      | Johnson and others         | Indt. E. Lewis                  |
| Swan                | Goodchild                      | Prichard                   | Dt. Lewis                       |
| Wm. Day             | Dawson                         | S. J. Macken               | Pro. Wright and Co.             |
| Wood and B.         | Doe dem. Rump and another      | S. J. Cullum               | Ejt. Jennings                   |
| Warneford           | The Duke of Brunswick          | S. J. Ghislin              | Ca. H. Crocker                  |
| Currie              | Wick                           | S. J. King                 | F. Issue, Towsey                |
| Same                | Pigott and others              | S. J. Clement and others   | F. Issue, Espin                 |
| Teogood             | Same                           | S. J. Ward                 | Dt. Elmslie and P.              |
| Hodgson and B.      | Brown                          | S. J. Esdaile and others   | Gov. Venning and Co.            |
| Warneford           | Hulse and others               |                            |                                 |
|                     | The Duke of Brunswick          |                            |                                 |
|                     | wick                           | S. J. Baker                | Ca. W. Berry                    |
| Tate                | Brown                          | S. J. Andrew               | Pro. Marten and Co.             |
| J. Strutt           | Parratt                        | S. J. Cusack               | Pro. Birch and B.               |
| Triston             | The Queen                      | S. J. Hardey               | Perj. Walter and P.             |
| Warneford           | The D. of Brunswick            | S. J. James                | Ca. H. W. Vallance              |
| Gregory, F. and Co. | Bennett                        | S. J. Gibson               | Hicks                           |
| Ravenscroft         | Lentham                        | Simmonds and another       | Ca. Hoppe and B.                |
| Bower and Son       | Brown                          | M'Lenn                     | Pro. Robson                     |
| W. Lane             | Lane                           | S. J. Hooper and another   | Ca. Kilgour and P.              |
| Miller              | Payne                          | S. J. Earl of Chesterfield | Dt. Gregory and Co.             |
| Moss                | Frost                          | S. J. Shadbolt             | Dt. Amory and Co.               |
| Newton              | Barnett                        | Simmonds                   | Dt. Humphrey                    |
| Williamson and H.   | Seed                           | S. J. Barnewall            | Pro. Westmacott and Co.         |
| Hodgson and B.      | Robertson and anor.            | S. J. Lord Valentia        | Pro. Rickards and W.            |
| H. J. Levy          | Soloman                        | S. J. Howard               | Pro. S. Abrahams                |
| W. Smith            | Grainge                        | S. J. Oldfield             | Pro. Berry                      |
| Blower and Co.      | Foley                          | S. J. Ward                 | Dt. Elmslie and P.              |
| Luttley and B.      | Hall                           | Harris                     | Dt. Neale                       |
| Watkins and H.      | Scargill                       | Becke and another          | Trov. Person                    |
| Warneford           | Duke of Brunswick              | S. J. Pearson              | Ca. Crocker                     |
| Vallance            | Doe dem. Holmes and another    | S. J. Price                | Tres. and Eject. Davies and Son |
| Shearman and M.     | Tilbury and others             | S. J. Drummond             | Dt. Aldridge                    |
| Cortfield           | Cooke                          | S. J. Gell                 | Dt. Gell                        |
| Brace and Co.       | Knill                          | S. J. Richmond Railway Co. | Dt. Bircham                     |
| Allen and N.        | Ogden                          | S. J. Overbury             | Pro. Whitaker                   |
| Symes W. and T.     | Doe dem. Gordon                | Story                      | Ejt. Blake                      |
| Otway               | Rich                           | Flowers                    | Pro. Sangster                   |
| Savage              | Walker                         | Vye                        | Pro. Gregory and Co.            |
| Wheelock            | Smith and another              | Reece                      | Pro. Greene                     |
| Pain                | Turrill                        | Crawley                    | Trov. J. M. Taylor.             |
| Brace               | Stokes and wife                | S. J. Rendall              | Dt. Roberts                     |
| Pocock and P.       | Jones                          | Ross                       | Pro. In person                  |
| Henderson and L.    | Doe dem. Eltrington and others | Tidy                       | Ejt. R. K. Lane                 |
| Clowes and Co.      | Parker                         | Jones                      | Pro. Sharpe and Co.             |
| In person           | Jones                          | Jones                      | Dt. W. Smith                    |
| Palmer and Co.      | Lindfield                      | Fillery                    | Dt. Dougan                      |
| Chappell            | Tolhurst                       | Notley                     | Pro. Sadgrove                   |
| Hodgson and B.      | Farrell, secy., &c.            | Burton and another         | Dt. Norton and Son              |
| Dyde                | Joel                           | Stewart                    | Pro. Manning                    |
| Richard Hare        | The Queen                      | Bouchett                   | Indt. In person                 |
| Dunn, W. and D.     | Doe dem. Bacon and others      | S. J. Carnegie             | Ejt. Elderton                   |
| Potter and Co.      | James                          | S. J. Llewellyn            | Dt. Tatham and Co.              |
| W. M. Webster       | Mitchell and another           | W. D. Crewdson             | Asst. Sharpe and Co.            |
| Same                | Same                           | Potter                     | Asst. Same                      |
| Same                | Same                           | Wood                       | Asst. Same                      |
| Pros. in person     | The Queen                      | Hart and two others        | Indt. Walter                    |
| Riley in person     | The Queen                      | Hart and others            | Indt. C. Walter                 |
| Hind and Son        | Dance                          | Bird                       | Pro. Jenkyn                     |
| Chubb               | D'Ebro                         | French                     | Ca. Parkinson                   |
| Surgent             | Hammick                        | Devonshire                 | Tres. Portal                    |
| Amory and Co.       | Heinke                         | Griffith                   | Dt. Burgess                     |
| Sheppard            | Ginger                         | Pyecroft                   | Dt. Pyecroft                    |
| Walker G. and Co.   | Doe dem. Conant and others     | S. J. Davies               | Ejt. Harting                    |
| Mortimer            | Baylis                         | S. J. Bleaden              | Dt. Hartings                    |

|                   |                                  |                         |                            |
|-------------------|----------------------------------|-------------------------|----------------------------|
| Lander            | Brown                            | Lord A. Conyngham       | Pro. Palmer                |
| Flowers           | Dallas                           | Greenhow                | Pro. Lovelands and B.      |
| J. W. Sloper      | Sloper                           | S. J. Seyler            | Pro. Bennett and P.        |
| J. S. Taylor      | Elder                            | Jones                   | Dr. Towne                  |
| C. and F. Allen   | Sewell and others                | Marshall                | Pro. Gwynne                |
| Wm. Horsely       | Doe d. Macord                    | Nicol and another       | Ejt. Baddeleys             |
| Benbow            | Balt                             | Brooke                  | Pro. Sargent               |
| Bickley           | Menzies                          | S. J. Duke, knt.        | Pro. Pontifex              |
| Cox and W.        | Twisleton and another            | Wand                    | Dr. Shirreff               |
| Mawe              | Drayson and another              | S. J. Clarkson, sen.    | Pro. Pontifex and M.       |
| Turner and Son    | Gardner                          | Denn                    | Ca. J. Duncan              |
| Bigland           | Rainsley                         | Jerningham              | Dr. Douglas                |
| J. H. F. Lewis    | Bradshaw and another             | Manning                 | Pro. In person             |
| Hooper and Co.    | Gibb and another, admin.,<br>&c. | Johnson and another     | Issue from Chancery, Jones |
| Richardson        | Doe d. Wright                    | Bristow                 | Ejt. In person             |
| Fladgate          | Collins and another              | S. J. Kingsbury         | Dr. Wathen                 |
| Turner            | Doe d. Mawley                    | Langmead                | Tres. and Ejt. Finch & S.  |
| R. K. Lane        | Owen                             | Walker                  | Pro. In person             |
| Netherole         | Peach                            | Edwards                 | Gregory and Co.            |
| Willoughby and J. | Dance and another                | Smith                   | Pro. Chidley               |
| Homfray           | Doe dem. Isaacs                  | Smith                   | Ejt. In person             |
| W. Keightley      | Houghton (a pauper)              | Stephen and another     | Ca. Hartley                |
| Weeks             | James                            | S. J. Wilson (The Hon.) | Austen and H.              |
| R. Raven          | Doe d. Philpott and an-<br>other | Hurst and others        | Ejt. In person             |
| McDuff            | George                           | Hughes                  | F. Issue Philp             |
| Wilde, R. and Co. | Sanderson                        | S. J. Cookson           | Pro. Crosby and Co.        |
| Hill and H.       | The Queen                        | S. J. Smith and others  | Sci. fa. Oliverson and Co. |
| H. E. Brown       | Frail                            | S. J. Dixon, Esq.       | Fearon and Co.             |
| Morphett          | Chennell                         | Innes                   | Pro. C. E. Lewis           |
| Beavan and A.     | Greville                         | Stultz and others       | In error J. Pike           |
| W. G. Lyle        | Doe d. Wilson & another          | Partridge               | Ejt. Carlon and H.         |
| Kirk              | Daubney                          | Phipps, Esq.            | Weller                     |
| Lebb              | Stuart                           | Dent                    | Tres. Prichard and W.      |
| J. Strutt         | Parratt                          | Hunt                    | Pro. Elmslie and P.        |
| Same              | Same                             | S. J. Elrington         | Pro. Aldershaw             |
| Same              | Same                             | Lawless                 | Pro. Keane                 |
| Solrs. Treasury   | The Queen                        | S. J. Wm. Hunter        | Indt. Bennett              |
| Same              | Same                             | S. J. Same              | Indt. Same                 |
| Gridley           | Bell and another                 | Midland Railway Co.     | Ca. Williamson             |

Common Pleas.

Middlesex.

|                       |                               |                                       |                          |
|-----------------------|-------------------------------|---------------------------------------|--------------------------|
| Melton                | Fearn                         | S. J. Countess Waldegrave             | Prom. Pearson            |
| Pickering             | Wood, jun.                    | Mountford, admix.                     | Prom. Knuckey            |
| W. Smith              | Colmer                        | S. J. Chappell, clk., &c.             | Ca. Capron and Co.       |
| T. Roberts            | Nathan                        | S. J. Piggott                         | Prom. Rickards and W.    |
| Lofty, Potter and Son | Anderson                      | S. J. Blackburn                       | Prom. Druce and Son      |
| G. J. Shaw            | Archer                        | S. J. Chapman                         | Ca. A. Dobie             |
| Same                  | Same                          | S. J. Robertson                       | Ca. Same                 |
| Pain and H.           | Wills                         | Day                                   | Dr. Turnley              |
| Davies, Son and C.    | Doe dem. Conant and<br>others | S. J. Holmes                          | Eject. Vallance and V.   |
| Pain and Hatherley    | Arc Angelo                    | Botbol                                | Prom. T. D. Taylor       |
| Same                  | Smith                         | Cubitt and another                    | Tres. Kilgour and P.     |
| N. Bennett            | Stephens                      | Cuttriss                              | Dr. F. Drake             |
| J. Strutt             | Parratt                       | S. J. Lord Beresford and an-<br>other | Prom. Walker, Grant & Co |
| J. D. Finney          | H. King                       | W. Bragge                             | Prom. Wilkinson          |
| J. T. Bowden          | J. Drown                      | K. Wright                             | Tres. W. Brancecombe     |
| Elderion              | Newton, Esq.                  | S. J. Chaplin                         | Ca. Galaworthy and N.    |
| A. Warrand            | Sawyer                        | Langford                              | Prom. Fry                |
| H. W. Cross           | Topgue                        | Webb and another                      | Gr. Ruthford             |
| Same                  | Same                          | Dashwood                              | Ca. Westmacott and Co.   |
| W. Nightley           | Palmer and another            | Smith                                 | Ca. Same                 |
| Same                  | Ward                          | Gearing                               | Prom. L. Norton          |
| Philp                 | Russell, adm.                 | Pitman                                | Ca. Lovell               |
| Webber                | Black                         | Carr                                  | Dr. Johnstone            |
| Wm. Smith             | Headin                        | Davy and another                      | Prom. Jay                |
|                       |                               |                                       | Tres. Levy & Woolley     |

## Court of Exchequer.

## Middlesex.

|                         |                            |                                |                          |
|-------------------------|----------------------------|--------------------------------|--------------------------|
| Oliverason and Co.      | Doe d. Peacock             | S. J. Frere                    | Ejt. Vizard and Co.      |
| Stevens and G.          | Faithful                   | S. J. Proctor                  | Pro. Burgoynes and Co.   |
| Green                   | McGregor                   | S. J. Keily                    | Pro. Amory and Co.       |
| Smythe                  | Morgan, junr.              | S. J. Beet                     | Tres. Gem and Co.        |
| Norris and Co.          | Smith                      | S. J. London and North-West.   |                          |
|                         |                            | Railway Company                |                          |
| S. Smith                | *Lee                       | S. J. Fenn, clk.               | Ca. Parker and Co.       |
| Gladstone               | Gaylard                    | Morris                         | Pro. Benbow              |
| T. G. Everill           | Goslett                    | Arber                          | Tres. J. Lewis           |
| Mayhew and Co.          | Messenger                  | Toy                            | Dt. Pittendreigh and Co. |
| Mill                    | Magger                     | Saxton and another             | Pro. Gresham             |
| Mead                    | Coulson, pauper            | S. J. Branson                  | Ca. Monkhouse.           |
| E. Lewis                | Gadderer                   | S. J. Haime                    | Dt. Hill and S.          |
| Richardson, Smith, & S. | Albano                     | S. J. Sir J. Duke              | Pro. Dean and Co.        |
| Gedye                   | Lennard                    | S. J. Pace                     | Dt. Pontifex and M.      |
| Lyon and Co.            | Clayton                    | S. J. Clayton and others       | Pro. Nixon               |
| Weeks                   | Bond                       | S. J. Ratcliff                 | Pro. Seton and N.        |
| Hornidge                | Thompson                   | Peel                           | Pro. Westmacott and Co.  |
| Weall and B.            | Heenan                     | Narraway, sued, &c.            | F. Issue, Chappell       |
| Wright and Co.          | Arnold                     | S. J. Davies and another       | Dt. Sleep                |
| Karslake & Co.          | Gravatt                    | S. J. Ward, Esq.               | Pro. Gregory F. and Co.  |
| Curling                 | Stokes                     | S. J. Collett                  | Case, Elmslie and P.     |
| Capes and S.            | Dearden                    | S. J. London and North West.   | Tress. Coppock           |
|                         |                            | Rail. Co.                      |                          |
| Yates and T.            | O'Connor                   | S. J. Ballantyne and another   | Ca. Parker and Co.       |
| Dawson                  | Spicer                     | S. J. Harman                   | Ca. Reed and Co.         |
| Wiglesworth and Co.     | Richardson                 | S. J. Duncombe                 | Dt. Richardson and Co.   |
| Elkins                  | Varnham                    | Young                          | Dt. Chilton and Co.      |
| Dupleix                 | Weippert                   | Weippert                       | Dt. Coppock              |
| W. Moss                 | Parker, P. O., &c.         | S. J. Kearney                  | Dt. Jervis               |
| J. H. Vaughan           | Tooth                      | Parker and another             | Pro. Leadbitter          |
| Gregory, F. and Co.     | Beale, P. O.               | S. J. Patent Galvanic Iron Co. | Ca. Scargill             |
| Hart                    | A. Spicer                  | Wright                         | Pro. Fry and Co.         |
| G. E. Spencer           | Tyler                      | Curlewis                       | Pro. Bush and M.         |
| Crocker                 | Davis                      | Parkin                         | Dt. J. P. D. es          |
| Hart                    | E. Spicer                  | Wright                         | Pro. Kennedy             |
| F. G. Randall           | Dean                       | Trafford                       | Pro. Bush and M.         |
| Loveland and B.         | Hewes                      | Waldock                        | Tres. Clapham.           |
|                         |                            |                                | F. Issue, Wade and Pen-  |
|                         |                            |                                | nington                  |
| Bell and Co.            | Burdis, P. O.              | Hutchinson                     | Pro. Chisholme and Co.   |
| C. Lewis                | Westley                    | Sargent                        | Pro. C. and H. Hyde      |
| Watkins and H.          | Greville                   | De Rutzen                      | Dt. Bigg and Co.         |
| Loveland and B.         | Loveland and another       | Pyke                           | Dt. Young and Co.        |
| Richards                | Harman and another         | S. J. Hope and others          | Trov. Walker             |
| A'Beckett and Co.       | Bidgood and others         | Smith and another              | Dt. Webert               |
| J. W. Walsh             | Barnes                     | Twentymar                      | Dt. Humphreys            |
| Lake                    | Cooper                     | S. J. Ashby and another        | Case, Vardy              |
| Chauntler and W.        | Matthew                    | Smith                          | Dt. W. M. Webster        |
| Weall and B.            | Armitage                   | Ind and others                 | Case, Gadsden and F.     |
| Rodgers                 | Birks                      | Davenport                      | Dt. Duncan               |
| E. Lewis                | Snell                      | S. J. Monkhouse                | Pro. Morpeth             |
| Wilson                  | Warwick and another        | S. J. Gill and others          | Case, Lawrance and P.    |
| Braham                  | Carncross                  | Green                          | Pro. Beart               |
| Johnson and Co.         | Newton                     | S. J. Wiggin                   | Pro. Blower and Co.      |
| J. A. Jones             | Locke and another          | Ashton                         | Dt. Silvester            |
| Hughes                  | Chambers and another       | Jennings                       | Covt. Grover             |
| Moseley                 | Turner                     | Baker                          | Dt. In person            |
| Elderton                | Elderton and another       | S. J. Lack and another         | Issue, Asprey            |
|                         |                            |                                | Brooksbank               |
| Campbell and W.         | Roberts and another exe-   | West and another               | Dt. Whitmore and Co.     |
|                         | cutors, &c.                | West                           | Hartley                  |
| Same                    | Williams and ux. extx. &c. | Gibbins                        | Dt. Whitmore and Co.     |
| Bodman                  | Booth                      | Thompson                       | Dt. Pryer                |
| Hoare                   | Clarke                     | Phillips, Bart.                | Dt. Dobie                |
| A'Beckett and Co.       | Rich                       | Biers                          | Dt. Coombe               |
| Bennett                 | Treherne                   | Crisp                          | Tres. Carlon             |
| Parker and Co.          | Wood and others            | Chaplin                        | Pro. Tilson              |
| Willoughby and J.       | Hawgood                    | Cleland                        | Case, Morpeth            |
| Chaplin                 | Osborne                    | Sims                           | Pro. Chambers            |
| Cullen                  | Fuller                     | Macey                          | Dt. Jacobs               |
| Salomon                 | Golding (pauper)           |                                | Dt. Clarke               |



# The Legal Observer,

## DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 15, 1848.

—“Quod magis ad Nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

### CROWN AND GOVERNMENT SECURITY BILL.

THE revolutionary doctrines promulgated, and the violent measures advocated in different parts of the United Kingdom, by persons assembled together with the avowed intention of redressing real or imagined grievances, have induced her Majesty's government to turn their attention to the existing laws for the punishment of sedition and treason, and to propose certain alterations which it is impossible not to regard as involving considerations of great professional and national interest.

It would be beside our purpose to discuss the policy or expediency—or that which we have heard more generally questioned—the sufficiency of the proposed measure. It is only intended at present to put our readers in possession of the scope and nature of the change in the law, which recent events are supposed to have rendered necessary.

The provisions of the statute 25 Edw. 3, c. 2, declaring “which offences shall be judged treason,” will not be affected in any manner by the proposed measure; but the enactments of the 36 Geo. 3, c. 7, which was entitled “An Act for the safety of his Majesty's person and Government against treasonable and seditious practices and attempts,” are considerably altered and modified. That act, amongst other things, provided:

“That if any person, after the passing of that act, should, within the realm or without, compass, imagine, invent, devise, or intend

death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of his Majesty, or to deprive or depose him from the style, honour, or kingly name of the Imperial Crown of this realm, or to levy war against his said Majesty, within this realm, in order by force or restraint to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both or either house of parliament, or to move or stir any foreigner with force to invade this realm, and such compassings, imaginations, inventions, devices, or intentions, or any of them, should express, utter, or do, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law, then every such person so offending should be deemed, declared and adjudged to be a traitor, and should suffer death, and forfeit as in cases of high treason.”

These provisions were made perpetual by the stat. 57 Geo. 3, c. 6, s. 1, but it seems doubts are entertained whether the provisions so made perpetual extend to Ireland. It is now proposed to repeal all the provisions of the 36 Geo. 3, c. 7, (made perpetual by the 57 Geo. 3,) which do not relate to the person of the sovereign, enacting other provisions in lieu thereof, and to extend to Ireland such of the provisions of the 36 Geo. 3, as are not repealed. This is effected by the 1st and 2nd sections of the new bill, which enact that,

“From and after the passing of this act, the provisions of the act 36 Geo. 3, c. 7, made perpetual by the act 57 Geo. 3, save such of the

same as relate to the compassing, imagining, inventing, devising or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the heirs and successors of King George the Third, and the expressing, uttering or declaring of such compassings, imaginations, inventions, devices or intentions, or any of them, shall be and the same are hereby repealed.

"And that such of the recited provisions as are not hereby repealed, shall extend to and be in force in that part of the United Kingdom called Ireland."

The most important alteration contemplated in the law, however, is that contained in the 3rd section of the new bill, which it is intended to substitute for the repealed provisions of the stat. 36 Geo. 3, c. 7. It is in the following terms:—

"That if any person after the day of the passing of this act shall, within the realm or without, compass, imagine, invent, devise or intend to deprive or depose the Queen from the style, honour or royal name of the Imperial Crown of this realm, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, within any part of the United Kingdom, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe either House of Parliament, or to move or stir any foreigner with force to invade the United Kingdom, or any other her Majesty's dominions, and such compassings, imaginations, inventions, devices or intentions, or any of them, shall express, utter or declare, *by publishing any writing or writing, or by open and advised speaking, or by any overt act or deed*, shall be deemed guilty of *felony*, and every person so offending, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for *the term of his natural life*, or for any term not less than *seven years*."

The words printed above in italics,—"*by publishing any printing or writing, or by open and advised speaking*,"—are not to be found in the stat. 36 Geo. 3, c. 7, and are stated to have been introduced into this enactment considerably, and with the special intention of checking and punishing the course of procedure which at the present time is supposed peculiarly to call for the immediate intervention of the legislature. Declaring the offence described in this section a felony, and subjecting parties convicted to transportation, in lieu of the extreme punishment inflicted in cases of treason, has rendered it essentially a new law, and indicates the altered spirit in which political offences are regarded,

In many old acts of a temporary nature, the words "*printing, writing, and advised speaking*," are to be found, as descriptive of certain overt acts of treason. Thus, the act of 13 Eliz. made, compassing to levy war, declared by printing, writing, or advised speaking, high treason, during the life of the then Queen; and there was an act of 13 Car. 2, to the same purpose, on which some prosecutions were founded, but which expired with the death of that king. The acts 4 Anne, c. 8, and 6 Anne, c. 7, bear a closer analogy, however, in form and construction to the bill before parliament than any of the earlier acts. These acts provided that every person who should maliciously, advisedly, and directly, by writing or printing, affirm that the Queen was not the rightful Queen, or that the Pretender had any right, or that the legislature had not sufficient authority to make laws for limiting the succession, should be guilty of high treason and suffer as a traitor; and that if any person should maliciously and directly, by preaching, teaching, or *advisedly speaking*, declare and maintain the same, he should incur the penalties of a premunire.

In commenting upon these acts, in his Discourse on High Treason, Sir Michael Foster says,—"*In no case can a man be argued into the penalties of the act by inferences and conclusions drawn from what he hath affirmed, the criminal position must be directly maintained to bring him within the compass of these acts. Nor will every rash, hasty, or unguarded expression, owing perhaps to natural warmth, or thrown out in the heat of disputation, render any man criminal within these acts: the criminal doctrine must be maintained maliciously and advisedly.*" Should it be deemed necessary to institute prosecutions for words or writings, under the law now framed, we have no doubt, the observations of this eminent criminal lawyer will not be forgotten, and will be deservedly considered as entitled to great weight.

To prevent the escape of persons indicted under the act now introduced by her Majesty's government, upon the ground that the facts alleged against them amount to treason, it is provided:—

"That if the matters alleged in an indictment for any felony under this act shall amount in law to treason, such indictment shall not by reason thereof be deemed void, and persons indicted for any felony under this act, shall not by reason thereof be entitled to be acquitted of such felony; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts."

By the 6th section, principals in the second degree, and accessaries before and after the fact are thus dealt with :—

“That in felonies punishable under this act, principals in the second degree, and accessaries before the fact, shall be punishable in the same manner as principals in the first degree, and accessaries after the fact shall on conviction be liable to two years imprisonment with or without hard labour.”

Such are the enactments which the responsible servants of the Crown consider requisite and adequate to enable them successfully to grapple with and overcome the emergency created, as it seems to be generally conceded, by adventitious circumstances, rather than by any deep rooted feeling of popular discontent or disaffection to the established institutions. The measure has received the all but unanimous sanction of both Houses of Parliament, and shortly after these remarks are in the hands of our readers will probably be part of the law of the land.

#### REPEAL OF CERTIFICATE DUTY.

THE petitions from the country in favour of the repeal of the Certificate Tax continue each week to be presented to the House of Commons. The number of towns, cities, or counties from which the petitions have proceeded is now 207, and no less than 99 members have been addressed in support of the prayer of the petitioners.

The bill will probably be soon presented, and we therefore subjoin a complete list of the petitions presented, and of the members to whom they have been entrusted.

We understand that the bill has been very carefully settled by the counsel to whom it was submitted by the Incorporated Law Society. It was, of course, requisite, after abolishing the Certificate Duty, to provide for the annual registration of attorneys and solicitors. It appears that prior to the year 1785, when the Certificate Duty was first imposed, there was no registration, and on the first imposition of the tax it was incumbent on the practitioner to obtain a certificate of his being duly enrolled before he could obtain a stamped certificate, but this was afterwards altered, and any one who paid the duty might obtain the stamped certificate and appear in the Law List.

Now, it was one of the main objects of the Attorneys' and Solicitors' Act, 6 & 7 Vict. c. 73, to prevent the frauds which had been

perpetrated by persons who had served no regular clerkship, but who took out certificates either in their own names or in the names of deceased attorneys, or of those who had gone abroad. It is manifest, with regard to the ordinary names of Brown, Jones, Smith, &c., there would be no means of ascertaining the identity of such persons with the names actually on the Roll, except by the method prescribed by the Attorneys' Act and carried into effect by the Registrar of Attorneys at the Incorporated Law Society; each person being required to sign his name to an annual declaration either by himself, his partner, or London agent.

In the new bill the necessary provisions have been made for continuing this registration, which by an experience of five years has proved efficient.

A different mode of registration takes place both in Scotland and Ireland, and it will be requisite for the practitioners in those parts of the United Kingdom to introduce provisions adapted to their respective cases. Communications have accordingly been made to the several societies in those parts of the empire, in order that they may either prepare clauses to be added to the bill for England and Wales, or bring in separate measures for the like purpose.

We understand that the bill has been placed in the hands of Lord Robert Grosvenor, one of the members for the metropolitan county, and we have no doubt that it will be introduced at the earliest opportunity. Some persons suppose that it is rather too late to make the proposition in the present session, but bills for the amendment of the law seldom receive attention until after Easter. We do not consider this to be a *mere financial* alteration, but to have an important bearing on the *administration of justice*, and involving an *important principle* in relation to the professional classes of the community—for it is manifest that if an annual sum can justly be demanded as a species of property qualification by the practitioners in the learned professions, the “*Duty*,” as it is called, ought to be discharged by the Bar and the Bench, and by all ranks of the clerical and medical professions; and if so, why not also by engineers, architects, and surveyors, and by authors, editors, artists, engravers, printers, and various other classes connected with intellectual occupations. We wish to see the principle recognized in the houses of parliament, and the great grievance acknowledged. We admit that the

present is not the precise time for immediate relief; but we have a right to a candid and honest admission of the *claim*, and we will "prove the *debt*" and take the *dividend* in due season.

The following are the names of the places from which petitions for repealing the duty have been presented:—

|                     |                        |
|---------------------|------------------------|
| Abergavenny.        | Epworth.               |
| Aberystwith.        | Exeter.                |
| Altrincham.         | Eye, Debenham, and     |
| Ashburton.          | Botesdale.             |
| *Ashton-under-Lyne. | Flint.                 |
| Axbridge.           | *Gainsborough.         |
| Axminster.          | Gateshead.             |
| Barnard Castle.     | Glamford Briggs.       |
| *Barnsley.          | Gloucester.            |
| Barnstaple.         | Gosport.               |
| Barton-on-Humber.   | Grantham.              |
| Battel.             | Halstead.              |
| Bawtry.             | Hanley and Shelton.    |
| *Berwick-on-Tweed.  | Haverfordwest.         |
| Beverley.           | Hereford.              |
| *Bideford.          | Hexham.                |
| Bingley.            | Hinton.                |
| Birmingham.         | Holbeach.              |
| Blackburn.          | Holywell.              |
| Bodmin.             | Honiton.               |
| *Bolton.            | Horbury and Ossett.    |
| Boston.             | Horncastle.            |
| Bradford.           | Huddersfield.          |
| Brecon.             | Ilminster.             |
| Bridgend.           | Ipswich.               |
| Bridgewater.        | Kirton-in-Lindsay.     |
| *Brighton.          | *Kidderminster.        |
| Bromsgrove.         | King's Lynn.           |
| Bromyard.           | Kingston-on-Hull.      |
| Burslem.            | Knaresborough.         |
| Burton-on-Trent.    | Lancaster.             |
| Bury, Lancash.      | Ledbury.               |
| Bury St. Edmunds.   | Leeds.                 |
| Canterbury.         | Leominster.            |
| Chard.              | Llandilo.              |
| *Cheltenham.        | London and Westminster |
| Chichester.         | (Incorporated          |
| Chippenham.         | Law Society).          |
| Chipping Camden.    | Louth.                 |
| Chorley.            | Ludlow.                |
| Cirencester.        | *Lyminster.            |
| Cleveland.          | Macclesfield.          |
| Clitheroe.          | Malden.                |
| Colne.              | Marlborough.           |
| Congleton.          | Market Drayton.        |
| Crediton.           | Midhurst.              |
| Crickham.           | Molton, South.         |
| Crickhowell.        | Mossnouth.             |
| Crowle.             | Newcastle Emlyn.       |
| Darlaston.          | Newcastle - under-     |
| Dartford.           | Lyme.                  |
| Dartmouth.          | Newnham.               |
| Denbigh.            | Newport, Monm.         |
| Doncaster.          | Newton Abbott.         |
| Dover.              | Northallerton.         |
| Dudley.             | Northamptonshire.      |
| Easingwold.         | Norwich.               |
| Ely.                | Oldham.                |

Otley.  
 Ottery, St. Mary.  
 Peterborough.  
 Pickering.  
 Plymouth.  
 Pontypool.  
 Poole.  
 Portsea.  
 Reading.  
 †Retford, East.  
 Ringwood.  
 Romford.  
 Ruthin.  
 St. Helen's.  
 Sandwich.  
 Sarum, New.  
 Seven Oaks.  
 Shaftesbury.  
 Sheffield.  
 Shrewsbury.  
 Sleaford.  
 \*Somerton, Langport,  
 and Mortock.  
 Southwell.  
 Stafford.  
 \*Stamford & Bourne.  
 Staple Inn Society.  
 Stockport.  
 Stokesley.  
 Stone.  
 Stow.  
 Stratton.  
 Stroud, Gloucester.

Sudbury.  
 Sunderland.  
 Sutton Coldfield.  
 Sutton, Long.  
 Taunton.  
 Tenbury.  
 Tenterden.  
 Tewkesbury.  
 Thirsk.  
 Tiverton.  
 Torrington.  
 Towcester.  
 Uttoxeter.  
 Wakefield.  
 Walsall.  
 \*Wareham.  
 Warrington.  
 Wednesbury.  
 Wellington.  
 \*Wells.  
 \*Weston-on-Sea.  
 Whitehaven.  
 Wigan.  
 Wimborne Minster.  
 Wincanton.  
 Winchester.  
 Witney.  
 Wiveliscombe.  
 Wolverhampton.  
 Woodstock.  
 Worcester.  
 †Wrexham.  
 York.

14 Petitions have also been presented from Solicitors with 153 Signatures.

The number of signatures to the country petitions is 2526

The members of the Incorporated Law Society . . . . . 1387

3913

From Towns marked thus (\*), two petitions have been presented. From Towns marked (†), three petitions have been presented.

The following are the names of the members who have presented petitions:—

|                       |                     |
|-----------------------|---------------------|
| Sir Thomas Acland.    | Mr. Beck.           |
| Mr. Hugh Adair.       | Sir J. Y. Buller.   |
| Mr. Adderley.         | Sir E. Buxton.      |
| Mr. Aglionby.         | Mr. Bond Cabbell.   |
| Col. Anson.           | Mr. Bonham Carter.  |
| Mr. Joseph Bailey.    | Mr. Christopher..   |
| Mr. Bankes.           | Mr. Cobden.         |
| Mr. Baring.           | Mr. Cockburn.       |
| Mr. Barkly.           | Sir Wm. Codrington. |
| Mr. Beckett.          | Mr. Colville.       |
| Mr. Benbow.           | Mr. Cripps.         |
| Lord Geo. Bentinck.   | Mr. S. Davies.      |
| Mr. Beresford.        | Mr. Deedes.         |
| Mr. Grantley Berkley. | Mr. Divett.         |
| Captain Boldero.      | Mr. A. Duncombe.    |
| Dr. Bowring.          | Mr. Oct. Duncombe.  |
| Viscount Brackley.    | Mr. Duncuft.        |
| Mr. Bremridge.        | Sir P. Egerton.     |
| Lord E. Bruce.        | Mr. T. Egerton.     |
| Mr. Breadley.         | Mr. Fitzwilliam.    |

Mr. Fuller.  
Mr. Greenall.  
Mr. Thos. Greene.  
Sir J. Hanmer.  
Mr. Hayter.  
Mr. Headlam.  
Mr. Heathcote.  
Mr. Henley.  
Mr. Law Hodges.  
Sir Alex. Hood.  
Mr. H. Hope.  
Mr. Hornby.  
Mr. Hudson.  
Mr. Hutt.  
Viscount Ingestre.  
Mr. Jackson.  
Earl Jermyn.  
Mr. Keppel.  
Mr. Kershaw.  
Mr. Littleton.  
Mr. Locke.  
Mr. Mackinnon.  
Mr. John Martin.  
Col. Matheson.  
Mr. W. Miles.  
Mr. Moffatt.  
Mr. Moody.  
Mr. Oct. Morgan.  
Viscount Morpeth.  
Mr. Muntz.

Mr. Ogle.  
Mr. Roundell Palmer.  
Mr. Wilson Patten.  
Captain Pechell.  
Col. Powell.  
Mr. Campbell Renton.  
Mr. Ricardo.  
Mr. Rice.  
Col. Salwey.  
Mr. Sandars.  
Mr. Ker Seymour.  
Mr. Sheridan.  
Mr. J. G. Smyth.  
Sir Wm. Somerville.  
Mr. Stafford.  
Mr. Stanley.  
Mr. Stansfield.  
Mr. Stanton.  
Sir F. Thesiger.  
Mr. Thicknesse.  
Col. Thompson.  
Sir J. Troilope.  
Mr. Waddington.  
Mr. Walpole.  
Mr. Ward.  
Mr. Welby.  
Mr. Westhead.  
Mr. M. Wilson.  
Mr. Wyld.

## LEGAL EFFECT OF AN I. O. U.

THE legal construction of this common form of memorandum between parties in acknowledgment of a debt, was the subject of consideration in a case in the Court of Exchequer,<sup>a</sup> which has been very recently reported. In that case, which was an action for money lent and on an account stated, the plaintiff produced an I. O. U. for 40*l.*, dated and signed by the defendant, but not addressed to the plaintiff or any other person; and Baron Rolfe, who presided at the trial, held, that this memorandum was neither evidence of money lent by the plaintiff to the defendant, nor of any account stated between them. The Court, however, after discussion and mature deliberation, with the concurrence of Baron Rolfe, ultimately laid down the rule, that although an instrument of this kind is not evidence of money lent by the plaintiff to the defendant, any more than it would be evidence to sustain a count for goods sold and delivered, or for work and labour, yet the production of an I. O. U. by the plaintiff is *prima facie* evidence that an account has been stated by the defendant with the plaintiff, and that the defendant is indebted to the plaintiff in the amount specified in the memorandum.

This decision is in conformity with that of the Court of Common Pleas in *Curtis v. Rickards*.<sup>b</sup> There it was strongly urged, that if a document not addressed to any particular person could be sued upon by the party producing it, without showing how it was obtained, it became in effect a negotiable instrument, and ought to be stamped; but the Court, whilst admitting that documents of this nature were liable to abuse, nevertheless held, that the production of the instrument by the plaintiff was a fact from which the jury might infer that he had it from the defendant; as where a letter is given in evidence with the direction torn off, it will be presumed *prima facie* that it was addressed to the party producing it. If the instrument was not given to the plaintiff by the defendant, it would be competent for the latter to call witnesses to show it had been in other hands; but it would be imposing a great hardship on the plaintiff to oblige him to prove the document was given to him by the defendant, as these memorandums often pass where none but the parties to them are present.

The difficulty arising from the circumstance that the I. O. U. is produced by a person who is not necessarily able to show that he has any privity with the defendant, obviously does not arise when the instrument is addressed by name to the party who produces it in evidence, but whether the instrument be or be not addressed to the plaintiff, the question remains, what is the effect of the evidence? This question is answered by the case of *Fesenmeyer v. Adcock*, first cited, in which it was distinctly held, that an I. O. U. is not evidence of money lent by the plaintiff to the defendant, although a contrary impression may arise from the case of *Douglas v. Holme*,<sup>c</sup> in which the Court of Queen's Bench would seem to have decided that an I. O. U. is evidence of money lent, under a mistaken idea as to what the Court of Common Pleas had decided in *Curtis v. Rickards*.

The practical conclusion suggested by the more recent decision is, that an I. O. U. is only evidence to support a claim under the count upon an account stated, and that the party intending to rely upon such evidence must take care that his declaration contains a count of this description, and that his particulars of demand are so framed as to entitle him to adduce evidence to support that count. If the defence is relied upon that the account was not stated be-

<sup>a</sup> *Fesenmeyer v. Adcock*, 16 Mee. & W. 449.

<sup>b</sup> 1 Man. & Gr. 46.

<sup>c</sup> 12 Ad. & Ell. 641.

tween the plaintiff and defendant, it must be shown that the I. O. U. was given not to the plaintiff, but to some third party.

## PRACTICE OF RETAINERS.

### PROPOSED RULES.

OUR readers may recollect that in our number for the 10th April last year, we laid before them 26 questions on the practice of retainers, which had been sent by the Council of the Incorporated Law Society to every attorney and solicitor practising in London.

In answer to the circular there referred to, the Council received much useful information, from which it appeared that comparatively few points in the practice were clearly settled and uniformly acted upon;—that others, although well known and generally complied with, were injurious to the suitors, and inconvenient to solicitors,—and many were so doubtful, that the most experienced practitioners differed with regard to them widely in opinion.

The Council, from the materials thus collected, assisted by their own professional knowledge, prepared with much care a series of rules to be observed in retaining counsel, calculated to settle the practice, and to exclude doubt and dispute. Anxious that the proposed regulations should receive the sanction of the Bench and the Bar, the Council in the month of May last submitted them to the Judges, to the Attorney and Solicitor-General, the Benchers of the Inns of Court, the Serjeants, and Queen's Counsel.

In consequence of this, the Council were favoured with some valuable suggestions from two gentlemen of great eminence at the Bar, which were most carefully considered, and for the most part adopted. These being the only alterations proposed by the Bar, the Council might have felt at liberty to conclude that the rules generally were approved of by that branch of the profession; but to avoid the danger of mistake on this important point, they at the end of Michaelmas Term last addressed a letter to the Attorney-General, requesting to be favoured with the sentiments of the Bar on the proposed rules, and soliciting the benefit of their opinion in the final settlement of them before the commencement of another Term.

It appears that no further objections or observations in consequence of this last

application have been received, and the Council therefore conceive the time has arrived for submitting the result of their labours to their professional brethren in general, and consequently a printed copy of the proposed regulations as now settled has been forwarded to every attorney and solicitor in London, inviting their sentiments upon them in their present state:—the anxious wish of the Council being that rules which are designed to regulate the practice on this important subject should be rendered as perfect as possible, and be adopted with the full concurrence and approbation of the solicitors.

The following are the proposed Rules of Practice relating to the Retainers of Counsel, submitted to the Judges of the Superior Courts and to the Bar, by the Council of the Incorporated Law Society.

### *General Retainers.*

I. That a general retainer applies to all Courts in which the counsel receiving it usually practises.

II. That if the counsel should be offered a retainer by the opponent of the party having given such general retainer, in any other Court than that in which he usually practises, the general retainer entitles the party giving it, to notice before the offered retainer is accepted.

III. That except it be lost, according to any of the following rules, the retainer lasts for the joint lives of client and counsel, or so long as the counsel continues in practice.

IV. In case a special retainer or brief is offered to counsel against the party who has given a general retainer, the counsel is at liberty to accept the special retainer or brief of the other party, unless within one week after issue joined, or replication filed, a special retainer be given by the party who gave the general retainer.

V. Where a general retainer has been given, and a brief is not delivered to the retained counsel in any action or suit in which the party giving the general retainer is concerned, the general retainer is entirely lost, unless in cases where a brief is given to a junior counsel only, and the services of the retained counsel appear unnecessary.

VI. Where a general retainer is given for one person, and he is sued or sues with others, and he defends separately, the retainer is binding; but it is otherwise if he defend jointly.

### *Corporation and Partnership Retainers.*

VII. Subject to the foregoing rules, a general retainer given for a corporation will continue, unless the corporation be dissolved or the grant of a new charter be accepted.

VIII. When a general retainer is given for a partnership or firm, it continues so long as the style of the partnership or firm continues.

IX. A general retainer may be given for a

provisional committee in respect of any subject of action or suit by or against such committee, or any member or members of it, arising out of the concern in which they are provisional committee-men.

*Special Retainers.*

X. A special retainer may be given before the commencement of an action at law or a suit in equity.

XI. A special retainer gives the client a right to the services of the counsel during the whole progress of the cause, including interlocutory applications, and bills of exception and re-hearings.

XII. The retained counsel is entitled to a brief on every occasion in which the case is brought before the Court, except where the services of the junior counsel only appear to the retaining solicitor necessary.

*Circuit Retainers.*

XIII. A special retainer in a country cause must be given for a particular assize.

XIV. If the venue be changed for another place on the same circuit, a fresh retainer is not required.

XV. If the cause be not tried at the assizes for which the retainer is given, the retainer must be renewed for every subsequent assize until the cause is disposed of, unless a brief has been delivered, and then the usual refresher fee is sufficient.

XVI. A retainer may be given for future assizes, without a retainer for the intervening assizes, unless notice of trial shall have been given for such intervening assizes.

XVII. Where a renewed retainer is necessary, it must be given before the end of the term preceding the assize.

XVIII. In any case requiring the renewal of a retainer, an adverse brief or retainer cannot be accepted without notice to the original client.

*Appeals, Writs of Error, and Nonsuits.*

XIX. A special retainer, in an appeal or on a writ of error, may be given before the appeal has been lodged or the writ of error issued.

XX. Counsel in the original cause cannot accept a retainer on an appeal or writ of error for the opposite party, without affording the client in such original cause the opportunity of giving such retainer.

XXI. After a nonsuit, a retainer cannot be accepted from the adverse party in a second action without notice to the client for whom a brief has been held in the first action.

*Opinions and Pleadings.*

XXII. Where counsel has drawn pleadings or advised, during the progress of an action or suit, a retainer cannot be accepted from the opponent, without notice to the first client.

*Promotion of Counsel.*

XXIII. The retainer of a counsel does not cease upon his being promoted to a higher rank at the bar.

*Form of Retainer.—Notice.*

XXIV. When a retainer is given by the plaintiff in a cause *A. v. B.*, and an action or suit is afterwards brought by *B. v. A.*, the counsel cannot take the retainer of *B.* without notice to *A.*, if the causes of action are connected.

XXV. A mistake in the title of an action or suit does not render the retainer inoperative, if it can be shown that the cause of action or suit is the same, and that there is no other to which the retainer can apply.

XXVI. The notice to the client mentioned in these rules, is intended to afford him an opportunity to give a special retainer to counsel.

*Amount of Fees.*

XXVII. The fees given for *general* retainers are as follow:—

|  | £ | s. | d.      |
|--|---|----|---------|
| In the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas | - | -  | 5 5 0   |
| In chancery and bankruptcy appeals                                   | 5 | 5  | 0       |
| In bankruptcy  | - | -  | 5 5 0   |
| In parliament  | - | -  | 10 10 0 |
| In the privy council   | - | -  | 10 10 0 |

XXVIII. The fees given for *special* retainers are as follow:—

|   |       |   |   |   |
|---|-------|---|---|---|
| At common law and in equity                     | -     | 1 | 1 | 0 |
| In parliament, on bills and election committees | - - - | 5 | 5 | 0 |
| In appeals to the House of Lords                |       | 2 | 2 | 0 |
| In the privy council                            | - - - | 2 | 2 | 0 |

April 6, 1848.

*April 6, 1843.*

**NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.**

**REGULATING THE QUEEN'S BENCH PRISON. 11 VICT., c. 7.**

An Act to amend an Act for consolidating the Queen's Bench, Fleet and Marshalsea Prison, and for regulating the Queen's Prison. [28th March, 1848.]

1. 5 & 6 Vict., c. 22.—*So much of recited act as relates to first-class prisoners repealed.*—Whereas, by an Act, intituled "An Act for consolidating the Queen's Bench, Fleet and Marshalsea Prisons, and for regulating the Queen's Prison," passed in 5 & 6 Vict., c. 22, it is among other things enacted, that in the Queen's Prison the male prisoners shall be separated from the female prisoners, so as to prevent all communication between them, and that the prisoners shall be divided into classes, and that the first class shall be constituted of debtors remanded by the Commissioners of the Court for the relief of Insolvent Debtors on the ground of fraud, or for refusing to file a schedule of their property: And whereas doubts have arisen as to the construction and application of so much of the above-recited Act as sets forth the description of such debtors as shall be comprised in the first class: Be it therefore declared and enacted by the



Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of the said Act as prescribes and sets forth that the first class of prisoners in the Queen's Prison shall comprise and be formed of debtors remanded by the Commissioners of the Court of Insolvency on the ground of fraud, or for refusing to file a schedule of their property, shall be and is hereby repealed.

2. *What persons shall compose first-class prisoners after passing of this Act.*—That from and after the passing of this Act the first class of prisoners in the Queen's Prison shall be composed of the three following descriptions of persons; namely,

First.—Debtors adjudged under the 77th, 78th, and 96th clauses of 1 & 2 Vict., c. 110, as not entitled to the benefit of the said act, and to be discharged at some future period :

Secondly.—Debtors refusing or neglecting to file a schedule of their property when ordered to do so by the Court for the relief of insolvent debtors under the provisions of the 36th section of 1 & 2 Vict. c. 110.

Thirdly.—Bankrupts against whom a warrant may be issued and lodged by the Commissioners of Bankruptcy for fraud or contempt of Court.

3. *Indemnity to Secretary of State and others for acts already done in regard to classification of prisoners, &c.*—That this Act shall be and is hereby declared to be a full and complete indemnity and discharge to her Majesty's Secretary of State and to the keeper of the Queen's Prison respectively, and to all persons acting under his or their authority and control, for all things heretofore done or permitted to be done by the said Secretary of State or by the said keeper or other persons in regard to the classification of the prisoners in the Queen's Prison, and that the same shall not be questioned or impeached in any Court of Law or Equity whatsoever to the prejudice or detriment of the said Secretary of State or the keeper of the Queen's Prison, or any persons acting under his or their authority and control.

4. *In case of illness or absence of keeper deputy-keeper to act.*—That the person appointed to act as deputy-keeper of the Queen's Prison in case of the illness or unavoidable absence of the keeper shall have all the powers and execute all the duties of the keeper of the Queen's Prison; and the keeper of the Queen's Prison shall be civilly responsible for all acts and omissions of his deputy-keeper.

5. *Tipstiffs of Court of Chancery, &c., to give security by bond or otherwise to keeper of Queen's Prison for faithful discharge of duties.*—*Penalty on tipstiffs neglecting to give security or disobeying instructions of keeper of Queen's Prison.*—That every tipstaff of the High Court of Chancery, and the Courts of Queen's Bench, Common Pleas, and Exchequer, shall and he and they is and are hereby

required to give such security, by bond or otherwise, to the keeper of the Queen's Prison for the time being as the Commissioners of her Majesty's treasury or any three or more of them shall direct, for the faithful discharge of the duties entrusted to them as such tipstiffs of the said Courts respectively in regard to any prisoners confined in the Queen's Prison; and the said tipstiffs shall, and they are hereby required to obey all such directions and instructions as they or either of them may from time to time receive from the said keeper of the Queen's Prison or his deputy in respect of such prisoners; and every tipstaff of the said Courts neglecting or refusing to give such security when required so to do, or not obeying the directions and instructions of the keeper of the Queen's Prison or his deputy, shall for every such default forfeit and pay the sum of 100*l.*, to be recovered in any of her Majesty's courts of law, in such manner as the said Commissioners of her Majesty's treasury may direct.

6. *Provisions of former acts as to reducing penalties, &c., for introducing spirituous liquors into Queen's Prison, no longer to exist.*—*Persons acting in contravention of existing rules as to introducing spirituous liquors may be taken before a justice, and summarily convicted.*—*Penalty for certain offences not to be reduced below 10*l.** And whereas under the provisions of acts heretofore passed certain penalties or terms of imprisonment are imposed upon persons convicted of carrying or taking any spirituous or fermented liquor into any prison, and power has been given by subsequent acts to any justice or justices of the peace before whom the offender is convicted to reduce or lessen the penalty or term of imprisonment, and it is expedient to alter such provisions in regard to the Queen's Prison: Be it therefore enacted, that, so far as relates to the Queen's Prison established under the Act passed in the 5th year of her present Majesty's reign, the power to reduce or lessen any penalty or term of imprisonment shall no longer exist; and if any person, in contravention of the existing rules of the said prison, shall carry or take or shall attempt to carry or take into the Queen's Prison any spirituous or fermented liquor, it shall be lawful for the keeper of the said prison or his deputy, or any turnkey or other person acting under his or their authority, to apprehend or cause to be apprehended any person so offending, and to convey him or her before a justice of the peace, who is hereby empowered to hear and determine such cases in a summary manner; and if the said justice shall convict any person of such offence, he shall commit such offender to the common gaol or House of Correction, there to be kept in custody for any period not exceeding three months, without bail or mainprize, unless such offender shall immediately upon conviction pay down such sum of money as shall be adjudged by the said justice, not exceeding 10*l.* nor less than 3*l.*: Provided nevertheless, that in every case where it shall

be proved that the spirituous or fermented liquor was concealed about the person of the offending party in bladders or skins, it shall not be lawful for any justice to reduce such penalty below the sum of 10*l.*; any law, custom, or usage to the contrary notwithstanding.

7. *So much of 55 Geo. 3, c. 113, as restricts the sum to be given to prisoners to 6*d.* per day repealed.*—That so much of an act passed in the 53*rd* Geo. 3, intituled “An Act for providing Relief for the poor Prisoners confined in the King’s Bench, Fleet, and Marshalsea Prisons,” as provides that the sum to be given to any one prisoner shall not exceed 6*d.* per diem, shall be and the same is hereby repealed.

### ADMISSION OF COUNTY PALATINE ATTORNEYS IN THE COURTS AT WESTMINSTER.

A QUESTION has been raised relating to the right of attorneys admitted in the County Palatine Courts before 1843, to be admitted into the Courts at Westminster without examination.

By the 45th section of 6 & 7 Vict. c. 73, persons admitted previously to the 1st Jan. 1843 in the Courts of the County Palatine, may be admitted in the Courts at Westminster without examination, on payment of the duty; and such admission will relate back to the time of the first admission, *if perfected by Michaelmas Term, 1844.* That time having passed, the admission would of course not have a retrospective effect, but it might have been intended by the legislature that attorneys on the Palatine Roll prior to 1843, should still be admitted without examination in the Courts at Westminster.

But then come the Rules of Easter Term 1846, made by the Judges of all the Common Law Courts, under the 15th and 16th sections of the act. The rules require *all* persons to be examined unless previously admitted in the Court of *Chancery*, and make no exception in favour of County Palatine attorneys. There does not appear to have been any decision of the Court (at least none is reported) on the construction of the 45th section, with reference to County Palatine attorneys; and inasmuch as they are not examined in their own Courts, and have not availed themselves of the privilege conferred by the 45th section, of being admitted in the Superior Courts at Westminster, on or before the 1st day of Michaelmas Term, 1844, they ought to be examined according to the Rules of Easter Term, 1846.

## MOOT POINTS.

### ENTAIL OF ANNUITY.

*A.* grants an annuity, secured on a term for years to *B.* and the heirs of his body; on default of issue to *C.* and his heirs. *B.*, by deed enrolled, conveys the annuity to *D.* and his heirs, and afterwards dies without issue.

Is the annuity entailable? Does the estate revert to *A.* by forfeiture, or is *D.* entitled?

*C. J.*

In Blackstone’s Commentaries, vol. 2, p. 113, it is stated that “an annuity cannot be entailed which charges only the *person*, and not the *lands* of the grantor;” and Mr. Christian, in a note to the same page, says,—“Out of a term for years or any personal chattel, *except in the instance of an annuity*, neither a fee conditional nor an estate tail can be created.”

If an annuity be granted out of personal estate to a man and the heirs of his body, it is a *fee conditional* at common law, and *there can be no remainder or further limitation of it*, and when the grantee has issue he has the full power of alienation, and of barring the possibility of its reverting to the grantor by the failure of the issue of the grantee. 2 Ves. sen. 170; 1 Brown’s Ch. Cas. 325.

In the case proposed, the limitation to *C.* was void. The grant to *B.* and the heirs of his body was a conditional limitation, and he, not having issue, had no power of alienation; consequently the estate reverts by forfeiture to *A.* the grantor.

*E. E.*

### LAW OF ATTORNEYS.

*A. B.*, and three others, carry on an extensive business as common brewers, under the firm of *A. B. and Co.*, which is conducted entirely by *A. B.*, the three other partners taking no part in the management; two of them reside in distant towns. *C.*, one of the firm, is an attorney, living in the town where the business is carried on, and in his professional capacity, conducts the law affairs arising out of the business, such as preparing leases, suing for debts, &c. due to the firm. At the last yearly settlement of the partnership accounts, a large bill is produced by *C.* for law business, which gives dissatisfaction to the two sleeping partners, who object to pay or allow it to form any part of the charge on the partnership effects. Can *C.* commence any proceedings at law or equity against his partners to recover the amount of his law bill?

Can one attorney sue another in the Small Debts Court, or is it more advisable to sue by bill as formerly, even though the cause of action is under 20*l.*; in the former case would the plaintiff be defeated by the defendant claiming his privilege (as an attorney) to be sued in the Superior Courts.

VERITAS.

**EASTER TERM EXAMINATION.**

THE examination of persons applying to be admitted on the Roll of Attorneys, will take place at the Hall of the Incorporated Law Society, on Tuesday, the 2nd May.

The number of applicants is 140, which as usual, will probably by various causes be reduced 20 or 30 per cent.

The testimonials of due service are to be left with the Secretary, on or before Saturday, the 22nd instant.

**QUESTION BOOKS.**

Several imperfect and unauthorized editions of the Examination Questions have been published for the supposed use of the candidates. Some of them contain answers calculated to mislead, and for the most part render no real service to the student.

These works, in some instances, bear the names of the compilers, but most of them are anonymous. We shall take an early opportunity of noticing them, and have a word to say on the injurious effect of the "cramming" system.

**FEEs IN COURTS OF LAW AND EQUITY.**

*To the Editor of the Legal Observer.*

SIR,—I have read your remarks on the Fees in Courts of Law and Equity,\* and I could have wished that you had given a more extended report of Mr. M'Leod's evidence,—you have stated the fact of the payment of 804*l.* for office copies in the Master's Office, but you have left the inexperienced amongst us in ignorance, that it was entirely a gratuitous payment.

It appears to me that the Court has done all that was practicable in the matter referred to—it has abolished the old system under which the solicitor's fee for attendance was disallowed, unless he took or paid for a copy—and has left the taking copies entirely at the discretion of the solicitor.

I remember the time when our being compelled to take these copies, in order to the allowance of our just fees, was considered an abuse,—and yet now we are left to do what we think just and right by our clients—a discretion is given us, but we have not the moral courage to do our duty.

For my own part, I consider the alteration a boon not to be thrown away, and in the course of my limited practice, I act upon that opinion, and yet I do not find that I am treated with

any want of respect, or that there is any lack of attention to my business.

With reference to the particular case before us—I mean this payment of 804*l.*—if it had been my case, I should have paid for just as many copies as would have afforded, in my opinion, a fair and liberal remuneration for the extra time and attention paid to my business, and no more.

C.

[We did not continue the extract regarding this transaction, because the Solicitor and the Master's clerk were at direct issue on the question, whether the former was induced to take the copies in order to avoid the delay of the long vacation. This part of the case, if the imputed extortion can be sustained, should be evidenced by more than one witness. It is a most grave charge, and we did not think ourselves justified in bringing it forward in the present state of the evidence.—Ed.]

**PROBATE OF CONSISTORIAL COURT OF LONDON.**

*Druce v. Dennison.* P. 520, *ante*.

SIR,—Referring to the report of this case, allow me to inquire, through the medium of your correspondents, whether it is the practice that a will, having been proved in the Consistorial Court of the Bishop of London, cannot afterwards be proved in the Prerogative Court of Canterbury. It is stated in the report, that the difficulty consisted in the refusal of the Diocesan Court to part with the will—but I think this can scarcely be, as I have several times in the course of my practice, after having proved a will in one Court, proved upon an office copy in another.

C.

**NOTES OF THE WEEK.****LAW APPOINTMENT.**

Lord Lovelace, the Lord Lieutenant of the county of Surrey, has appointed Woronzow Greig, Esq., Barrister-at-Law, to the office of Clerk of the Peace for the county of Surrey, vacant by the decease of C. F. Lawson, Esq. Mr. Greig is a member of the Northern Circuit, and was called to the Bar in May, 1830.

The office of Clerk of the Peace is usually held by an Attorney. This appointment cannot be so important as that of the Clerkship of the Central Criminal Court, so well filled by Mr. Clark.

**CROWN AND GOVERNMENT SECURITY BILL.**

A new clause has been added to this bill since the observations at page 549, *ante*, were

\* See p. 489, *ante*.

written. It is to this effect:—that in any indictment for a felony under the act the offender may be charged with any number of the matters, acts, or deeds, by which the compassing, imagining, inventing, &c., shall have been expressed, uttered, or declared.

## PROGRESS OF LAW BILLS IN PARLIAMENT.

### House of Lords.

#### NEW BILLS IN PROGRESS.

Administration of Oaths in Chancery. Passed.  
—The Lord Chancellor.  
Incumbered Estates Ireland. Re-committed.  
Clergy Offences. For 2nd reading.—Bishop of London.  
Audit of Railway Accounts.—In Committee.  
Lord Monteagle.  
Amendment of Criminal Law. In Select Committee.—Lord Campbell.  
Unnecessary Actions Prevention. In Committee.—Lord Campbell.  
Bail by Coroners for Manslaughter. In Committee.—Lord Campbell.  
Stamp Duties. Passed.  
Aliens. In Committee.—The Lord President.  
Bankruptcy Law Amendment. For 2nd reading.—Lord Brougham.

### House of Commons.

#### NEW BILLS IN PROGRESS.

Crown and Government Security. In Committee.—Sir G. Grey.  
Winding-up Joint-Stock Companies. In Committee.—Mr. Milner Gibson.  
Jewish Disabilities Relief. In Committee.—Lord John Russell.  
Removal of Poor. In Committee.—Mr. Baines.  
Administration of Justice out of Sessions.

(No. 1). In Select Committee.—Attorney-General.

Special and Petty Sessions. In Select Committee.—Attorney-General.

Protection of Justices. In Select Committee.—Attorney-General.

Administration of Justice on Summary Convictions. (No. 2). In Select Committee.—Attorney-General.

Agricultural Tenant-right. For 2nd reading.  
Mr. Pusey.

\*Roman Catholic Relief. In Committee.  
Mr. Anstey.

Public Health. Re-committed—Lord Morpeth.

Game Laws Amendment. In Committee.  
—Mr. Colville.

To Establish an Appeal in Criminal Cases. For 2nd reading.—Mr. Ewart.

Exempting Small Tenements from Rates.—Mr. P. Scrope. For 2nd reading.

Petty Bag Office.—For 2nd reading. Mr. Romilly.

Parliamentary Electors Rates.—Sir De Lacy Evans. For 2nd reading.

Stamp Duties. Passed.

Oaths in Chancery. Passed.

Election Recognizances. Passed.

Vacating Seats of Insolvent Members.—Mr. Moffatt.

#### NOTICES OF NEW BILLS.

Imprisonment before Trial.—Lord Nugent.  
To Prevent Bribery at Elections.—Sir J. Pakington.

Game Laws.—Mr. Bright.

Ecclesiastical Courts.—Mr. Bouverie.

Rights of Outgoing Tenants.—Mr. S. Crawford.

Friendly Societies.—Mr. F. O'Connor.

Extending Election Franchise.—Mr. Wyld.

Repeal of the Small Debts Act. Mr. Cochrane.

Remedies against the Hundred. Sir W. Clay.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Rolls Court.

*Thellusson v. Woodfall.* March 24, 1848.

#### PRACTICE.—INVESTMENT UNDER ORDER OF THE COURT.

*Where trust money is invested in land under an order of the Court, and the property is subject to a mortgage, which is to be paid out of the purchase money, the order for payment of the purchase money should be upon the Master's certifying that the conveyance has been executed by the mortgagee and all proper parties.*

This was a petition praying for the payment out of Court of a sum of 17,000*l.* to the vendor

of an estate, which had been purchased by the trustees in this cause, and it prayed that such sum might be so paid on the Master's certifying that the conveyance had been executed by all proper and necessary parties.

Mr. Renshaw for the petitioners.

\*The Master of the Rolls having inquired whether the property was subject to any mortgage, and being informed that it was, and that the mortgage was to be paid off out of the purchase money, said, that the words of the order should be on the Master's certifying that the conveyance had been executed by the mortgagee, and all other proper and necessary parties.

Vice-Chancellor of England.

Gilbert v. Cooper. March 8, 1848.

**SOLICITOR.—UNDERTAKING IN A COMPROMISE.—JURISDICTION.**

*Where an arrangement between the solicitor for the defendants and the solicitor for the plaintiff is entered into for the compromise of a suit, and a personal undertaking is given by the one to the other to pay certain costs of the suit: the court, in the exercise of its jurisdiction over solicitors, will compel the fulfilment of such undertaking.*

THIS was a motion on behalf of Mr. Drake, the solicitor of the plaintiff, in the cause that Mr. James, the solicitor of the defendants, might be directed to pay to Mr. Drake 172*l.*, the amount of certain of plaintiff's costs in the suit pursuant to an undertaking given by Mr. James to that effect. By the affidavit of the plaintiff's solicitor it appeared, that in July, 1846, a compromise of the suit was arranged between the two solicitors, which was reduced into writing, and one of the conditions of the compromise was, that certain of the costs of the suit, as between solicitor and client, should be paid to Mr. Drake by Mr. James, and if any question should arise thereon, the same should be referred to Mr. Gregory. The affidavit then went on to state, that the defendant had delivered his bill for such costs, amounting to 172*l.*, but the same had not been paid.

Mr. Bethell and Mr. Wickens appeared on the motion, contending, that as Mr. James was solicitor for some of the defendants only, and not for all, the undertaking he had entered into became a personal one, and therefore, that he ought, without more, to pay the amount of plaintiff's costs.

Mr. Rolt and Mr. Terrell, contra, contended, 1st, that the undertaking was not a personal one, and that the order for payment ought to be made upon the defendants themselves; and, 2ndly, that there was no instance on record of the court exercising such a jurisdiction over a solicitor as that contended for in the present instance; the only case near the present one was *Peart v. Bushell*, 2 Sim. 38, where the court would not interfere to compel a solicitor to perform an undertaking given by him to do certain acts for clearing the title to an estate.

The Vice-Chancellor said, it was manifest that it could not have been the intention that the costs were to be obtained by the plaintiff's solicitor from the defendants themselves. The indemnity was by Mr. James, and he thought it was clearly a personal undertaking by him. If any question had arisen upon the bill of costs, it was provided, that there should be a reference to a third party. It was simply an arrangement between the plaintiff's solicitor and the solicitor for some of the defendants, and it was the duty of the court to see that such an arrangement as that which had been entered into between two solicitors, who were officers of the court, should be carried into effect. He should make the order in the terms asked.

**STOP ORDER.—COSTS.**

Hoole v. Roberts. Feb. 14, 1848.

*Where a petition was presented by parties entitled to a fund in court which had become distributable, for payment to themselves and a mortgagee, on a stop order being applied for by the mortgagee, he was refused the costs of his application.*

IN this case certain parties who were entitled to part of a reversionary interest in one-fourth of the personal estate of a testator expectant on the death of Sarah Alsop, by an indenture bearing date the 8th February, 1839, mortgaged their interest to Sarah Mead. An administration suit had been instituted in respect of the estate of the testator, and a sum of 130*l.* had been carried over to the account of the parties entitled in reversion. On the death of Sarah Alsop, a petition was prepared on behalf of these parties for payment of the money out of court, and their solicitor forwarded the draft petition to the solicitors of Sarah Mead, requesting them to insert the amount of their claims in the petition. No alteration was made by them in the petition, whereupon the solicitor of the parties entitled in reversion inserted a clause in the prayer to the effect, that the money due to Sarah Mead might be paid to her. On the petition being presented, the solicitors of Sarah Mead presented another petition praying for a stop order on the fund.

Mr. Bethell and Mr. Follett, for the reversioners, objected to this petition as totally unnecessary, the fund being immediately distributable.

Mr. Rolt and Mr. Terrell, in support of the petition for the stop order, contended that there ought to have been a formal service of the first petition, and that the mortgagee in strictness ought to have presented the petition.

The Vice-Chancellor said, there was no reason to believe but that the parties who presented the first petition meant to deal fairly. The fund was very small, and the solicitor for the mortgagee was aware of what was being done; it would therefore have been much better to have abstained altogether from this proceeding. The first petition should in strictness have been served on the mortgagee, and, upon the whole, the best thing he could do would be to make an order on both petitions for payment, as prayed by the first petition; the petitioners in the second petition *not to have the costs of their petition.*

Mitford v. Reynolds. March 11, 1848.

**CONSTRUCTION OF MARRIAGE SETTLEMENT.****—CREDITOR.—BOND.**

*Where a bond was executed in contemplation of a marriage and also a settlement, one of the provisions of which was, that the trustees should stand possessed of all trust monies and securities in case the marriage should not be solemnized within 12 calendar months after the date of the settlement, in trust for H. E. P. absolutely, and the marriage was*

never solemnized, but the bond which formed part of the settled estate remained in the possession of the obligor until his death, he having written upon it the word cancelled." Held, that, on the administration of the obligor's estate, H. E. P. was not entitled, as cestui que trust of the bond, to come in as a creditor on the obligor's estate for the amount in the bond.

MR. MITFORD, in contemplation of the marriage of a Miss Pattle with a Mr. Huddleston, executed a bond, dated 31st October, 1834, by which he bound himself to James Pattle and W. Pattle to pay the sum of 20,000 sicca rupees, and a settlement was at the same time executed, to which Mr. Mitford, Mr. Huddleston, Miss Pattle, James Pattle, and William Pattle were parties. By one of the clauses of the settlement it was provided, "that until the said marriage had been solemnized according to the form of the Protestant Church, or in case the same should not be solemnized within 12 calendar months after the date of those presents, then in such case the said trustees should stand possessed and interested in all and singular the trust monies and premises and the securities for the same in trust for the said H. E. Pattle, her executors, administrators, and assigns, absolutely and upon no other trust or purpose whatsoever, and should pay and assign the same accordingly." Huddleston also executed a bond at the same time, binding himself to pay a certain sum in case the marriage should be solemnized. The intended marriage was broken off, and the settlement and the bond were delivered up to Mr. Mitford, who wrote upon the back of the bond the words "Cancelled. Robert Mitford." He died in 1836, and no claim was put in by Miss Pattle until 1844, when she presented a petition claiming the 20,000 sicca rupees, with interest from the date of the bond. Upon a reference to the Master her claim was disallowed; exceptions were taken to his report, and now came on for argument.

Mr. Bethell and Mr. Craig, for Miss Pattle, contended that the marriage was not the only thing contemplated by the settlement. The settlement was intended to be a provision for Miss Pattle, whether she married or not. She was possessed of private monies of her own, and the proviso at the end of the settlement was intended to apply to them, and not to the bond. The mere fact of writing "cancelled" on the bond did not do away with the liability of the obligor; it had always remained in his possession, and constituted a debt from him to the obligees; they relied upon the legal validity of the bond. They cited the authorities in *Cecil v. Butcher*, 2 J. & W. 573; *Flower v. Martin*, 2 Myl. & Cr. 459.

Mr. Stuart, Mr. Wigram, and Mr. Lloyd, contra, cited *Lautour v. Tresdale*, 8 Taunton, 830; *Hill v. Gomme*, 5 Myl. & Cr. 250.

The Vice-Chancellor said, the whole question was, whether according to the true construction of the settlement, having regard to the circumstances, Miss Pattle had become cestui que

trust of the bond; it was not his duty to give any opinion as to the legal validity of the bond, that might be tried at law. *Prima facie* the bond was one which he considered to be legal, and on which the money might be recovered, provided the case was such as that the court should think it right that the obligees and trustees of the settlement were in such a situation as to be allowed to sue on the bond for the benefit of Miss Pattle. There was more or less an intention that Miss Pattle should marry Huddleston, but there was an objection to the marriage on the part of Mitford, the intended husband being a Roman Catholic, and he was anxious that the marriage should take place according to the Protestant form, and he executed the bond upon the prospect of the marriage, and the settlement was prepared at the same time. His Honour then read portions of the settlement, and particularly the proviso at the end before stated, and said that a great part of the settlement was nonsense, and that some parts could not be allowed in a court of equity to have their literal construction. His opinion on the whole construction of the settlement was, that if the marriage did not take place according to the Protestant Church, no trust arose for Miss Pattle, and that although by an action or other means the money might possibly be recovered on the bond, it was a monstrous case for the court to declare that Miss Pattle was entitled as cestui que trust. His opinion was that she was not so entitled, and her claim as such could not be allowed.

*Ex parte Martin.* March 10, 1848.

PAYMENT OF MONEY OUT OF COURT.—TRUST FUND.—10 & 11 VICT. c. 96.

*Where a petition is presented under the 10 & 11 Vict. c. 96, for the purpose of obtaining payment of the dividends of a trust fund, which had been transferred by the trustee into court, it is not necessary to serve the trustee with the petition.*

THIS was a petition presented under the act 10 & 11 Vict. c. 96, and stated that by certain indentures of settlement made on the marriage of Caroline Martin, the petitioner, a sum of stock had been vested in trustees upon trust to pay the dividends to her for life for her separate use, and any further sums which might be vested in the trustees were to be paid to her on the same trusts. The surviving trustee of the settlement having become desirous of being relieved from the trust, proceeded under the act 10 & 11 Vict. c. 96, filed an affidavit stating the indenture creating the trust, and paid the fund with the privy of the Accountant-General into the Bank in the matter of the trust.

Mr. Blunt appeared on the petition, and asked that the dividends might be paid to Caroline Martin for her life. The trustee had not been served with the petition, but it was contended that such service was not absolutely necessary under section 2 of the act; Vice-Chancellor Wigram having in a late case held

so, and also that the former affidavit of the trustee was without more a sufficient evidence of the petitioner's title.

The Vice-Chancellor said, he thought it was not necessary to serve the trustee. He had made some orders under that act, and it was his opinion that the act was intended to denude trustees for evermore from responsibility. The order might be taken in the way asked.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

*In re Grylls and others.* Friday, Jan. 28, 1848.

REMOVAL OF FIAT.

*Bankrupts were carrying on business within one district, and a fiat was taken out in another, in which one of the bankrupts resided, and had all his separate property to which the creditors must ultimately have recourse; the Court, on the application, ordered the fiat to be removed to the district where the business was situated.*

THE fiat in this case was issued at the instance of R. W. Cousens, a son of one of the bankrupts, and was directed to the Court of Bankruptcy in London, the bankrupt Cousens residing at Stepney. The fiat was opened upon the debt of B. Cousens, another son of the bankrupt Cousens; and Mr. Turquand was appointed the official assignee. This was a petition presented by some of the creditors for the purpose of having the fiat removed from the London Court to the Bristol district, and in the meantime the choice of assignees might be stayed. The debts appeared to amount to 3,000*l.*, none of which were in the London district, but one creditor for 876*l.* resided out of the Bristol district, and all the joint assets were in Carmarthenshire. The value of the buildings and machinery at Llanelly, where the business of the firm as ironfounders, &c., was carried on, was above 2,000*l.*, and the debts there were no more than 150*l.*

*Swanston and Flather* for the petition.

*Russell and Renshaw*, for the bankrupt Cousens, opposed the application on the ground of the separate estate of the bankrupt Cousens, which would be available to make good the demands of the joint creditors, being altogether in London, and considerably exceeding the joint estate. They said that a majority of the creditors were in favour of the fiat's being continued in the London district.

*His Honour* said, that the bankrupts in this case carried on the business of their trade at Llanelly, in Carmarthenshire. Two of them resided there; the third, a dormant partner, resided in London. There was no separate trade, no trade in fact, but that carried on in Carmarthenshire, nor was there any wharf, warehouse, or counting-house at any other place. The fiat was issued by the son of the dormant partner, who resided in London, and the residence, so to speak, of the fiat was in London, according

to the rule and practice of the Bankrupt Office; still he thought that if the whole circumstances of the case had been brought to the attention of the Court, it would have directed the fiat to Bristol. He considered that it was, in a sense, the right of the Bristol creditors to have the fiat in that jurisdiction, unless a strong reason were shown to the contrary. No such reason had been shown to him, and it was almost as a matter of right that the order of removal should be made.

Court of Bankruptcy.

*In re the Tring, Reading, and Basingstoke Railway Company.* March 30, 1848.

PROOF OF DEBT BY SOLICITORS WHO ARE SHAREHOLDERS.—PARTNERSHIP.

*The solicitors of a railway company accepting shares in the company, are partners, and upon the bankruptcy of the company, are not entitled to prove against the company as creditors, in competition with ordinary creditors of the company.*

*Quære.* If solicitors who are shareholders can claim against a bankrupt company, after the debts of ordinary creditors have been fully satisfied?

MESSRS. HILL AND EVERILL, who had acted as solicitors for the Tring, Reading, and Basingstoke Railway Company, tendered a proof of a debt for professional services rendered to the company, amounting to 4,606*l.*

Mr. *Laurance*, on behalf of the assignees, objected to the proof on the ground that Messrs. Hill and Everill were shareholders in the company, and therefore partners; and that Mr. Hill was also one of the promoters. He cited *Wilson v. Lord Curzon*, 15 Mees. & W. 532, in which Mr. Baron Alderson observed, that if a promoter was to be paid at all, he must pay himself.

Mr. *Cooke*, for the claimants, contended that the debt was proveable, and that the acceptance of shares did not constitute Messrs. Hill and Everill partners in the undertaking. (*Walstab v. Spottiswoode*, 15 Mees. & W. 501; *Wyld v. Hopkins*, 16 Law J. 25, Exch.) If Mr. Hill was a promoter, his partner, Mr. Everill, had not that character, and their joint claim as solicitors could not be affected by the circumstance.

Mr. Commissioner *Konblanque* said, the only question arising in this case was, whether the relation of partners existed between Messrs. Hill and Everill, the claimants, and the company? Nothing was more thoroughly established in bankruptcy than, that one partner in a firm or company could not prove against his copartners, until the creditors of the estate under the administration of the Court were fully satisfied by having their various claims discharged in full. If the demands of creditors whose claims were incontestible were fully liquidated, and a surplus remained; it then became a question, whether the shareholders or partners were authorized to divide the surplus amongst



themselves, and in what proportions? In the present case he was clearly of opinion that Messrs. Hill and Everill had no right to stand in competition with ordinary creditors, they having constituted themselves partners by receiving and accepting certain shares allotted to them. It was also a fact that the name of one of the claimants (Mr. Hill) appeared in the books of the company as a promoter. The view now taken, he understood, had been adopted in a former case, under this very bankruptcy, by Mr. Commissioner Shepherd. Mr. Green, the Secretary, proposed to prove for services rendered in that capacity to the company, but it was holden that Mr. Green had placed himself in the position of a partner, and could not prove against his copartners. That case was weaker than that on which he was now called upon to decide. He was informed, however, that with respect to the proof tendered by Mr. Green, there had been a petition presented to the Vice-Chancellor, praying to have the judgment rejecting his proof reversed. That petition was still depending. As to the cases cited by the counsel for the claimants, it was enough to say they were clearly distinguishable from the present case, and he felt his own

opinion in this case strengthened by what fell from Baron Alderson in the case of *Wilesey v. Lord Curzon*. He repeated, however, that he determined to reject the proof, not so much on the authority of any case cited, but upon the ground that Messrs. Hill and Everill, by their acceptance of an allotment of shares from the company, made themselves partners in the company, and the law was clear that one partner could not claim against others, whilst debts incurred with third parties remained unsatisfied. For the present, therefore, he should reject the proof; but if the appeal pending in Mr. Green's case should be decided in the appellant's favour, he would re-hear the present case. Supposing the claims of all the undisputed creditors of the company to be liquidated, and a surplus to remain, a new question would arise, whether Messrs. Hill & Everill would be entitled, as partners, to any and what share of the surplus so to be divided? He was not called upon to decide that question at present; but should direct a sum to be reserved, sufficient to meet Messrs. Hill and Everill's claim, in case the decision of Mr. Commissioner Shepherd in Mr. Green's case should be reversed. Proof rejected.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Law of Attorneys.

The previous Sections of this Series of the Digest in the present volume will be found as follow:—

Registration of Voters' Appeals, pp. 15, 347.  
Law of Attorneys, p. 42.  
Law of Railways, pp. 71, 178.  
Costs, p. 197.

#### Courts of Equity:

Law of Wills, p. 121.  
Construction of Statutes, p. 149.  
Principles of Equity, p. 222.  
Pleading, p. 241.  
Practice, p. 268.  
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#### Courts of Common Law:

Construction of Statutes, p. 373.  
Grounds of Actions and Principles, pp. 396, 415.  
Pleading, p. 443.  
Practice, p. 465.  
Evidence, p. 487.

#### House of Lords:

Appeals, p. 507.  
Criminal Law, p. 523.  
Bankruptcy, p. 541.

### ADVOCATE.

*Witness.*—Where a party makes a speech and conducts a case as an advocate, he cannot afterwards give evidence as a witness in the same cause.

In an action tried before the under-sheriff, the attorney for the plaintiff opened the case to the jury, examined the witnesses, made a speech in reply, and afterwards proposed to call himself as a witness to refute the defence. His evidence was objected to by the defendant, but received by the under-sheriff, and a verdict was returned for the plaintiff: *Held*, that the Court would grant a new trial *Stones v. Byron*, 4 D. & L. 393.

### AGENT.

*Money had and received.*—A client in the country employed a country attorney to sign judgment on a warrant of attorney for him. Execution was sued out, and the London agents of the country attorney sent the writ into the country to be executed. The money was remitted to London and paid into the bankers of the London agents: *Held*, that money had and received would not lie by the client against the London agents: there was no privity between them.

From a correspondence between the parties it appeared that the London agents had, without authority, appropriated to the payment of a balance due to them from the country attorney the money received in the execution, and that a demand of that money had been made, and that they had expressed their surprise at being called on to refund it. *Held*, that, under these circumstances, and as the money had not come into their hands in the ordinary course of business, they were liable to be called upon to repay it under an application to the summary jurif-

diction of the Court. *Robins v. Fennell and another*, 35 L. O. 392.

#### APPOINTMENT OF ATTORNEY.

**Railway Company.**—A railway company entered an appeal against a poor-rate. When the appeal was called on, the respondents objected to the notice of appeal, on the ground that it was signed by an attorney on behalf of the railway company, but who was not appointed such attorney under the corporate seal of the company, and as the railway company was a corporation, the appointment should have been under their corporate seal. The sessions were of this opinion, and dismissed the appeal. A rule *nisi* for a mandamus to the sessions to hear the appeal having been obtained:

**Held**, that as there was a power in the company's act for the directors to appoint the officers of the company, the appointment of the attorney need not be under seal, but that a parol appointment was sufficient.

**Held**, also, that as no objection was taken in terms at the sessions, that the attorneys giving the notice of appeal were not *in fact* attorneys to the company, it was not necessary that any evidence should have been given of the fact of such appointment by parol. *Reg. v. The Justices of Cumberland*, 35 L. O. 370.

And see *Taxation of Costs*.

#### CLIENT'S INSANITY.

A person charged as a lunatic made (with the sanction of her counsel and attorney) an agreement to dispose of her property in a certain manner. The agreement was made pending an inquisition into the fact of her lunacy. She afterwards brought an action to recover the deeds delivered up under the agreement: **Held**, that she was entitled to recover them.

In such a case it is a proper question to be left to the jury, whether the plaintiff made the agreement of her own free will, or through the recollection of her past confinement as a lunatic and a fear of the renewal of that confinement. *Cumming v. Ince*, 35 L. O. 214.

#### CONSPIRACY.

See *Striking off the Roll*.

#### LIABILITY.

If attorneys conducting the business of a fiat in bankruptcy take out a summons to attend before a Commissioner under stat. 6 G. 4, c. 16, s. 33, which is disobeyed, and they afterwards obtain a warrant of the Commissioner to arrest and bring before him for examination the party so summoned, which warrant proves invalid, the attorneys are not liable in trespass, if they have taken no steps in the execution of the warrant, except ordering it to be prepared by an agent, who, when it was ready, gave the messenger notice to take it.

Although the attorneys, in applying for the warrant, used urgency, and being told by the Commissioner that they must take it at their peril, said they would do so. *Cooper v. Harding*, 7 Q. B. 928.

#### LIEN ON DEEDS AND PAPERS.

*F. and R.*, attorneys in partnership, are em-

ployed by C., who becomes indebted to them; another partner joins the firm, and in respect of work done by the three, a bill of costs is incurred, and certain papers belonging to C. come into their possession: **Held**, that the firm of three had no lien upon the papers so as to enable them to retain them in respect of the bill of costs due from C. to the former firm. *In re Forshaw*, 35 L. O. 260.

#### LONDON AGENT.

See *Agent*.

#### PRIVILEGED COMMUNICATIONS.

**Discovery.**—**Demurrer of witness.**—A solicitor is not bound to disclose professional communications which took place between himself and his client, although no litigation existed or was contemplated at the time.

The same rule applies to similar communications between the solicitor and a third party who acts as the medium of communication between the solicitor and client.

A solicitor demurred to interrogatories seeking a discovery of communication between him and A. B., stating that in such communication "he considered and treated A. B. as representing his client and as being the medium of communication between him and his client:" **Held**, that he had brought the case within the rule as to protection. *Carpmael v. Powis*, 9 Beav. 16.

#### RAILWAY COMPANY.

See *Appointment of Attorney*.

#### SERVICE OF NOTICE.

When, where neither the party nor his attorney are to be found, the court will deem a service at the place from which affidavits are dated to be sufficient. *Wenham v. Bowman*, 35 L. O. 395.

#### STRIKING OFF THE ROLL.

**Conviction of conspiracy.**—**Reversal of judgment.**—An attorney of this court was convicted and received judgment on an indictment charging a conspiracy to defraud parties of goods, and that, in pursuance thereof, one conspirator obtained the goods on credit, and the attorney seized them by a collusive execution which he sued against such conspirator. Judgment was reversed for insufficiency of the indictment.

**Held**, a sufficient ground for striking him off the roll, though no affidavit was made that he had committed the offence, but only that he had been convicted; and though he deposed that the money produced by the execution was justly due to him from such alleged conspirator, and denied that he had been "a party or privy to such criminal conduct," as was stated in the indictment, or that it contained any offence punishable by law; the affidavit not specially denying the conspiracy, or that the act charged was done in pursuance of it. *In re King*, 8 Q. B. 129.

Case cited in the judgment: *Ex parte Brounsall*, 2 Cowp. 829.

#### TAXATION OF COSTS.

1. *Service of subpoena to appoint solicitor.*—The solicitor of a defendant who was abroad,

having died during the taxation of the costs ordered to be paid by the defendant, and thereupon the Taxing Master refusing to proceed, the defendant was ordered to be served with subpoena to appoint another solicitor; and service of it, under the circumstances, at the late residence of parties with whom the defendant last and usually resided, was ordered to be deemed good service. *Gibson v. Ingo*, 35 L. O. 390.

2. *Agreement*.—An agreement that a solicitor shall be paid a certain sum per day above his usual costs, is not such an agreement as makes it necessary to obtain a special order for taxation. *Re George Eyre*, 35 L. O. 323.

## WITNESS.

See *Advocate*; *Privilege*.

## Law of Costs.

## AFFIDAVITS.

The Court refused to appoint a receiver of partnership property, though after a dissolution, where there was no allegation of mismanagement or waste, and the effect of the appointment would be to hinder the business being carried on according to the original agreement on which the partnership was founded. The costs of affidavits filed by a defendant in opposition to affidavits filed by the plaintiff after answer, and therefore inadmissible, ordered to be borne by the plaintiff. *Child v. Clive*, 35 L. O. 366.

## APPEAL.

1. *Bill for injunction where plaintiff's title fails at law*.—*Appeal for costs only*.—This Court has no jurisdiction to mulct the defendant in his costs of an injunction suit, upon the grounds of a vexatious and expensive defence of the action at law, wherein the plaintiff failed to show a title to the subject-matter of the bill.

An appeal for costs only will be entertained whenever a principle is involved, or the practice of the Court requires to be defined, or a particular estate or fund has been charged with them, or they have been refused, contrary to the usual practice, as in a bill for discovery, &c. *Chappell v. Purday*, 34 L. O. 103.

2. *Motion in respect of costs only*.—The Court will not rehear a motion in respect only of costs, if it be necessary to investigate the facts of the case for the purpose of ascertaining the propriety of the decision in respect of the costs. *Myers v. Wetherall*, 34 L. O. 79.

## COUNTY COURTS.

1. *Actions commenced since the act*.—Per Baron Platt.—Plaintiff in an action commenced since the 15th March, is entitled to costs if there was no County Court open in his district at the time of his suing out the writ. *See quare*. *Parker v. Crouch*, 35 L. O. 196.

2. The County Courts Act has not repealed the provisions of the Middlesex Court of Requests Act for entering a suggestion to deprive a plaintiff of costs. *Ransom v. Price*, 35 L. O. 219.

## COURT OF REQUESTS.

*Jurisdiction*.—An action was commenced in a Superior Court in December, 1846, for a debt recoverable under the provisions of a Court of Requests Act. Notice of declaration was given on the 28th of March, 1847, on which the defendant paid the debt. The Court of Requests Act provided, that where a party commenced proceedings in the superior courts for a debt recoverable under the Court of Requests Act, he should have no costs. The plaintiff, however, demanded 6l. 17s. costs, which not being paid, he signed final judgment on the 1st of May, and issued execution. No County Court was established in the district until March, 1847.

A motion being made to set aside the execution and enter a suggestion on the roll to deprive the plaintiff of costs.

*Held*, that as the plaintiff had commenced his action in the superior court at a time when he would not have been entitled to any costs, he could not recover them now; for the 9 & 10 Vict. c. 95, merely repealed Courts of Requests Acts from the time of the establishment of the County Courts in the districts where the Court of Request existed. *Warburg v. Read*, 35 L. O. 68.

## COVENANT.

See *Jurisdiction*.

## DISCLAIMER.

*Dismissal of bill*.—On an application of the plaintiff to dismiss his bill with costs against a disclaiming defendant, without prejudice to any question how the costs of such defendant should be ultimately borne, order refused. *Wigginton v. Pateman*, 35 L. O. 391.

## EXCEPTIONS.

A plaintiff who had not served the order referring the exceptions within the proper time, was refused a motion to discharge the order, or to take the exceptions off the file, and was ordered to pay the costs of the irregular service. *Atlee v. Gibson*, 35 L. O.

## FEME COVERT.

*Verdict obtained on a plea of coverture*.—Where a married woman obtains a verdict upon a plea of coverture pleaded by her in person, she is entitled to a taxation of her costs out of pocket. *Findley v. Farquharson*, 3 C. B. 347.

## INJUNCTION SUIT.

See *Appeal*, 1.

## INSOLVENT.

See *Security for Costs*, 4.

## INVESTMENT IN LAND.

2 & 3 Vict. c. cvii.—The circumstance of a party having made three applications for the investment in land of different portions of the purchase-money of lands taken under an act of parliament, is not sufficient to induce the Court, to refuse him the costs of a fourth application to invest the residue in the funds. *The Merchant Tailors' Company*, 34 L. O. 438.

## JURISDICTION OF JUDGE AT CHAMBERS.

**Covenant.**—The 7 Geo. 2, c. 20, extends to actions of covenant on the mortgage deed, as well as to actions on bonds given as a collateral security. The jurisdiction conferred by that statute on "the Court," may be exercised by a judge at chambers—and *semble*, the "costs" to which the plaintiff is entitled, are only the costs in such suit.

Where a mortgagee sued on the covenant for repayment on the mortgage deed, and a judge at chambers made an order on him under the 7 Geo. 2, c. 20, to stay proceedings, and give up the deeds, &c., on payment of principal, interest, and costs of that suit, the Court discharged a rule for setting aside the order. *Clay v. Collier*, 35 L. O. 176.

See *Court of Requests*.

## LUNATIC.

**Re-conveying mortgaged estate.**—The costs of obtaining an order under 11 Geo. 4, and 1 W. 4, c. 60, for committee of a lunatic mortgagee to re-convey the mortgaged property, must be paid out of the lunatic's estate. *Re Townsend*, 34 L. O. 462.

## MOTION.

Where two defendants appear by the same solicitor, and two notices of motion are served on their behalf on the same day to dismiss the bill for want of prosecution, the costs of one motion only will be allowed. *Balcarres v. Hudson*, 35 L. O. 171.

See *Appeal*, 2.

## NEW TRIAL.

A rule was made absolute for a new trial, without any mention of costs in the rule: *Held*, that the Master was right in allowing the successful party all such costs of the first trial as were available for the second.

And therefore, that he was right in allowing the costs of the briefs, subpoenas, and copies on the first trial; but not the fees on the briefs, or the consultation fees, or the costs of serving the subpoenas for the first trial. *Lambert v. Lyddon*, 4 D. & L. 400.

## OFFICIAL ASSIGNEES.

See *Security for Costs*, 1.

## PAYMENT INTO COURT.

To debt for goods sold, money lent, &c., the defendant pleaded, except as to 15s. parcel, &c., never indebted, and as to the said sum of 15s. payment into Court. The plaintiff joined issue on the first plea, and accepted the 15s. paid into Court. The issue was tried and found for the defendant: *Held*, that the plaintiff was entitled to all the costs relating to the 15s. paid into Court. *Harrison v. Watt*, 4 D. & L. 519; S. C., 16 M. & W. 316.

Case cited in the judgment: *Goode v. Goldsmith*, 2 M. & W. 202; 5 Dowl. 288.

## PRISONER.

**Attachment out of the Court of Chancery.**—Where a prisoner in execution under an at-

tachment issued out of the Court of Chancery, applies to a judge at chambers under the 7 & 8 Vict. c. 96, and upon an affidavit of service of the summons, which, however, has never been served so as to reach the party, and the judge makes an order for his discharge, the Court will grant a rule to set aside such order, except so far as it may operate to protect the officer of the prison.

The Court will direct the costs of the application for such rule to be paid by the prisoner. *Wenham v. Bowman*, 35 L. O. 395.

## SECURITY FOR COSTS.

1. **Official assignee.**—The official assignee of a bankrupt or insolvent is entitled to be indemnified against the costs of an action brought in his name without his authority. *Laws v. Bott*, 16 M. & W. 300.

Case cited in the judgment: *Whitehead v. Hughes*, 2 Dowl. P. C. 258.

2. **When plaintiff temporarily abandons his residence.**—The description as of his usual and long-established place of residence by a plaintiff who conceals the place of his actual abode, whilst under apprehension of being served with processes at law in matters unconnected with the suit, is not such a fraudulent misdescription as will entitle the defendant to move for security for costs; especially if it appears on the pleadings that the defendant is an accounting party to the plaintiff. *Hurst v. Padwick*, 35 L. O. 291.

3. **Petition.**—The rule which requires a party resident out of the jurisdiction to give security for costs applies to a petition as well as to a bill. *In re Dolman*, 35 L. O. 170.

4. **Insolvent plaintiff.**—In an action for the infringement of a patent, the Court will not grant a rule nisi calling upon an insolvent plaintiff to give security for costs, where the circumstances do not at least lead to a strong presumption that his assignee will adopt the action and proceed for the benefit of the estate. *Stead v. Williams*, 35 L. O. 395.

5. The defendant obtained an order for security for costs, on the ground that the plaintiff resided out of England. Before that order was complied with the defendant arrested the plaintiff in a cross action, and the latter went to prison, and then took out a summons to rescind the order for security, upon which an order was made suspending that order as long as the plaintiff remained in actual custody in the cross action, and giving the defendant in the present action 10 days' time to plead. Some days after this the defendant in this action discharged the plaintiff out of custody, who at the expiration of the 10 days signed judgment for want of a plea, though he (the plaintiff) had not given security: *Held*, that the judgment was irregular, and the order for security for costs revived on the plaintiff's discharge from prison. *Todd v. Johnson*, 35 L. O. 394.

6. **Plaintiff's residence not sufficiently described.**—Security for costs must be given where the description of the plaintiff's re-

aidence is insufficient. *Sibbering v. Earl Balcarras*, 35 L. O. 214.

WITNESS.

**Subsistence-money for a mariner detained to give evidence.**—In an action for breach of a charter-party, the trial having been postponed at the instance of the defendants, the plaintiff detained the captain of the vessel in this country for a period of 300 days, having been

advised by counsel that he could not safely examine him under the 1 W. 4, c. 22, the defendants having intimated an intention to call witnesses to impugn his conduct: *Held*, that, upon taxation of costs, the plaintiff was entitled to subsistence-money for the witness during the period of, his detention. *Evans v. Watson*, 3 C. B. 327.

Case cited in the judgment: *Berry v. Pratt*, 1 B. & C. 276.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LIST.

Sittings before and after Easter Term, 1848.

AT LINCOLN'S INN.

Lord Chancellor.

APPEALS.

|            |                     |                                   |                |
|------------|---------------------|-----------------------------------|----------------|
|            | Sharp               | Taylor                            | appeal pt. hd. |
|            | Ditto               | Ditto                             | appeal.        |
| S. O.      | Hodgkinson          | Hodgkinson                        | appeal         |
|            | Ditto               | Jackson                           | ditto          |
| Af. T. Tm. | Allfrey             | Allfrey,                          | ditto          |
|            | Wilson              | Wilson                            |                |
| S. O.      | Ditto               | Ditto                             | appeal         |
|            | Ditto               | Foster                            |                |
|            | Westby              | Westby                            | ditto          |
|            | Ditto               | Ditto                             |                |
|            | Ditto               | Ditto                             | ditto          |
|            | Fraser              | Jones                             | ditto          |
|            | Cunningham          | Murray                            |                |
|            | Ditto               | Hay                               | ditto          |
|            | Ditto               | Murray                            |                |
|            | Lawrence            | Ditto                             |                |
|            | Maxwell             | Kibblethwaite,                    | appeal         |
|            | Ditto               | Ditto                             | ditto          |
|            | Boyd                | Boyd                              | ditto          |
|            | Watts               | Hyde, cause by order              |                |
|            | Gough               | Bult,                             | appeal         |
|            | Attorney-Gen.       | Gibbs, ditto                      |                |
|            | In re Ludlow        |                                   |                |
|            | Charities           | By order.                         |                |
|            | Banks               | Whittal                           |                |
|            | Ledsam              | Banks                             | appeal         |
|            | Sibson              | Edgworth                          | ditto          |
|            | Leahy               | Lord Melton                       | ditto          |
|            | Ditto               | Ditto                             | ditto          |
|            | Curling             | Flight                            | ditto          |
|            | Grove               | Bastard                           | ditto          |
|            | Blair               | Ormond                            | ditto          |
|            | Birch               | Joy, 4 causes                     | ditto          |
|            | Joy                 | Birch                             |                |
|            | Sturgis             | Ditto                             | ditto          |
|            | Reynolds            | Whelan                            | ditto          |
|            | St. Victor (pauper) | Deversux                          | ditto          |
|            | Raud                | McMahon                           |                |
|            | Ditto               | Hiscox                            | ditto          |
|            | Ditto               | Boddington                        |                |
|            | Clarke              | Wyburn                            | ditto          |
|            | Attorney-Gen.       | Mayor, &c. of the Boro' of Boston | ditto          |
|            | Turner              | Newport                           | ditto          |
|            | Forbes              | Herring                           | ditto          |
|            | Elderton            | Lack                              | ditto          |
|            | Stiles              | Guy                               | ditto          |
|            | Gatland (pauper)    | Lanner                            | ditto          |
|            | Hervey              | Hewitt                            | ditto          |
|            | Raven               | Kerl                              | ditto          |

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

West Cornwall Railway Company. v. Mohatt dem.  
 Baker v. Baker, dem.  
*S. O. G.*, Myers v. Macdonald, 2 causes.  
 Westell v. Leslie, fur. dirs. and exns. pt. hd.  
 Bird v. Ford, cause by order.  
 Same v. Same, suppl. bill.  
 Hickson v. Mainwaring, 2 causes.  
 Chambers v. Siggers.  
 Ladbroke v. Smith  
 Browne v. Ditto  
 Earl of Balcarras v. Johnson, exons.  
 Duke of Leeds v. Earl of Amherst, exons.  
 Battershall v. Bishop of Winchester, fur. dirs. and costs  
 Jenkins v. Briant, fur. dirs. and costs.  
 Adey v. Arnold, ditto  
 Roberts v. Roberts.  
 Green v. Norton, 5 causes, fur. dirs. and costs.  
 Rackham v. Siddall.  
 Green v. Bourke.  
 Cocking v. Briggs.  
 Palmer v. White.  
 Jones v. Evans.  
 Salomons v. Connop.  
 Rainbow v. Lamb fur. dirs.  
 Ditto v. Moss, cause.  
 Sturges v. Arrowsmith.  
 Jones v. Walker.  
 Bourke v. Green.  
 Pemberton v. Wilcocks.  
 Dobson v. Lyall, fur. dirs. and costs.  
 Greenwood v. Groom.  
 Westbrook v. Knight.  
 Johnson v. Tucker.  
 Pocock v. Johnson, fur. dirs. and costs.  
 Vulliamy v. Vulliamy.  
 Pawsey v. Hale, exons.  
 Jowett v. Board, fur. dirs. and costs.  
 Skarf v. Soulbey.  
 Cook v. Fynney, fur. dirs. and costs.  
 Paffin v. Sanderson.  
 Bailey v. Parry, fur. dirs. and costs.  
 Rodney v. Rodney, 3 causes.  
 Cotton v. Penrose.  
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 Emberton v. Wood, 8 causes.  
 14th April, Price v. Parker.  
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Alder v. Masters.  
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 Robinson v. Sollory  
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 Bryan v. Twigg, exons., fur. dirs. and 4 petns.  
 Cook v. Fynney, rebg.  
 Staniland v. Willott.  
 Clark v. Franklin.  
 Earl Chesterfield v. Duncombe.  
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 Ashburner v. Wilson, fur. dirs. and costs.  
 Dawson v. Dawson, ditto.  
 Hill v. Sanders, ditto.  
 Steward v. Farrants.  
 Fitch v. Frend, fur. dirs. & costs.  
 Lawson v. Meek.  
 Squire v. Clunes.  
 Tyson v. Tyson.  
 Beaumont v. Jones, fur. dirs. & costs.  
 Mitchel v. Reynolds.  
 Walker v. Eastern Counties Railway Company.  
 Pattle v. Sutton.  
 Davis v. Burgh.  
 Warden v. Ashburner, fur. dirs. and costs.  
 Castleden v. Snelling.  
 Johnson v. Bates.  
 Vesey v. Vesey, fur. dirs. and costs.  
 Short, Patch v. Graves.  
 Burton v. Taylor, fur. dirs. and costs.  
 Short, Burton v. Loveday.  
 Short, Missing v. Rawlings, fur. dirs. and costs.  
 Carter v. Carter.  
 Dunholme v. Kent, fur. dirs. and costs.  
 Magregor v. Bainbridge.  
 Monro v. Taylor.  
 King v. Francis, fur. dirs. and costs.  
 Ellis v. Cowne.

### Vice-Chancellor Knight Bruce.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Edwards v. Salloway, dem.  
 Masters v. Wright, objection as to parties.  
 Daintree v. Haynes, exons. as to answer.  
 Ball v. Bonfield.  
 Trinity T., Barton v. Haynes.  
 21st April, { Snowdon v. Marriott, exons. 2 sets.  
 { Ditto v. Ditto, fur. dirs. and costs.  
 Dewbery v. Dewbery.  
 Garrett v. Wilkinson.  
 Johnson v. Richards.  
 Lane v. Lane.  
 Pearce v. Peter.  
 18th April, Buckell v. Hardley.  
 Gould v. Gill.  
 18th April, { Ditto v. Ditto }  
 { Ditto v. Sturgis. }  
 18th April, Seaton v. Waller.  
 Allen v. Leach, fur. dirs. and costs.

Cordy v. Wright, ditto.  
 22nd April, Land v. Ash.  
 Ditto, Lewis v. Bourne.  
 Ditto, Rowe v. Rowe.  
 Fuller v. Fuller, fur. dirs. and costs.  
 Parkinson v. Gore.  
 Wroughton v. Colquhoun, exons. and fur. dirs.  
 Short, Emery v. Phillips.  
 Jones v. Meares.  
 26th April, Smith v. Wright.  
 Ditto, Alexander v. Bushby.  
 Ditto, Baker v. Moseley.  
 27th April, Menzies v. Connor.  
 28th April, Skinner v. M'Donall.  
 29th April, Radshaw v. Newbold.  
 29th April, Bower v. Slaney.  
 Short, Cheetham v. Cannon.

### Vice-Chancellor Stigram.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Jackson v. Field, dem.  
 To fix { Moor v. Vardon, }  
 a day { Ditto v. Lachlan. }  
 Clementi v. Fielding.  
 To fix a day, Gaskell v. Holmes, fur. dirs. and costs.  
 S. O., Sowerby v. Clayton, ditto.  
 Scarborough v. Pinsent.  
 Osborne v. Foreman, fur. dirs. and costs.  
 S. O., Rooke v. Drake.  
 S. O., Viscount St. Vincent v. Hinckley.  
 S. O., Smith v. Harwood.  
 10th April, { Bateman v. Margerison. }  
 { Ditto v. Wilcock. }  
 Ditto, Jackson v. Huxtable.  
 15th April, Labouchere v. Clarkson.  
 10th April, Hughes v. Williams.  
 Ditto, Chappell v. Rees.  
 Ditto, Coltman v. Harrison, fur. dirs. and costs.  
 Read v. Cohen.  
 Nell v. Ashhurst.  
 13th April, Staley v. Regent's Canal Co.  
 Ditto, Bewsher v. Ariell.  
 10th April, Shepherd v. Anderson, fur. dirs. and costs.  
 Barrett v. Buck, ditto.  
 17th April, Sentence v. Porter.  
 21st April, Little v. Spooner, 2 causes.  
 Salomans v. Hasenclever, fur. dirs. and costs.  
 Middleton v. Reay.  
 26th April, Petre v. Duncombe.  
 Attorney-Gen. v. Osborne, fur. dirs. and costs.

### Queen's Bench.—Crown Paper.

#### Easter Term, 1848.

Bucks.—The Queen v. The Great Western Railway Company.  
 Same v. Same.  
 Warwickshire.—The Queen v. Thomas Collins.  
 Staffordshire.—The Queen v. John Keen.  
 Carnarvonshire.—The Queen v. The Inhabitants of Holywell, Flintshire.  
 Cornwall.—The Queen v. Henry Nicholls.  
 Wiltshire.—The Queen v. The Inhabitants of St. Thomas, New Sarum.  
 Lincolnshire.—The Queen v. The Inhabitants of Coningsby.  
 Yorkshire.—The Queen v. The Inhabitants of Carlton.  
 Yorkshire.—The Queen v. The Inhabitants of Ad-  
 dingham.

*Wiltshire*.—The Queen v. The Inhabitants of Colerne.

*Devonshire*.—The Queen v. The Inhabitants of East Stonehouse.

*Yorkshire*.—The Queen, v. The Inhabitants of Gomersal.

*Leicestershire*.—The Queen v. The Rev. E. B. Shaw, clk.

*England*.—The Queen v. The Commissioners of Stamps and Taxes.

*Westmoreland*.—The Queen v. Martin Irving, Esq.

*Westmoreland*.—The Queen v. Martin Irving, Esq.

*Middlesex*.—The Queen v. The Inhabitants of St. Pancras, (with Hackney.)

*Middlesex*.—The Queen v. The Inhabitants of St. Pancras, (with St. Luke.)

*Yorkshire*.—The Queen v. The Inhabitants of Monk Breton.

*Essex*.—The Queen v. The Inhabitants of Witham.

*Surrey*.—The Queen v. The Inhabitants of Whitechapel.

*Cornwall*.—The Queen v. Richard William Riley.

*West Riding, Yorkshire*.—The Queen v. The Churchwardens, &c. of Longwood.

*Devonshire*.—The Queen v. Wm. Warren & others. (feoffees, &c.)

*Cambridgeshire*.—The Queen v. The Inhabitants of Ashwell.

*Surrey*.—The Queen v. Henry Chasemore.

*West Riding of Yorkshire*.—The Queen v. The Inhabitants of Ovenden.

*West Riding of Yorkshire*.—The Queen v. The Inhabitants of Aldborough.

*Cheshire*.—The Queen v. The Inhabitants of Pott Shrigley.

*Cheshire*.—The Queen v. The Inhabitants of Macclesfield.

*Durham*.—The Queen v. Mayor, &c., of Sunderland.

*West Riding, Yorkshire*.—The Queen v. James Preston and another.

*West Riding, Yorkshire*.—The Queen v. Joseph Longbottom and another.

*Lancashire*.—The Queen v. The Inhabitants of Sheffield (Kirby and C.)

*Lancashire*.—The Queen v. The Inhabitants of Sheffield (Lye and family.)

*Colchester*.—The Queen v. The Inhabitants of St. Giles.

*Lancashire*.—The Queen v. The Overseers of Salford.

*England and Wales*.—The Queen v. The Tithe Commissioners.

*West Riding, Yorkshire*.—The Queen v. The Inhabitants of Halifax (with Alnwick.)

*Middlesex*.—The Queen v. The Inhabitants of Harrow on the Hill.

*Kent*.—The Queen v. The Inhabitants of Chatham.

*Worcestershire*.—The Queen v. J. M. G. Cheek and another.

*Wilt*.—The Queen v. The Inhabitants of Shepton Mallett.

*Cheshire*.—The Queen v. The Inhabitants of Glossop.

*Warwickshire*.—The Queen v. The Inhabitants of St. Michael, Coventry.

*West Riding, Yorkshire*.—The Queen v. The Inhabitants of Halifax (with Rishworth.)

*Leicestershire*.—The Queen v. The Inhabitants of St. Margaret.

*Surrey*.—The Queen v. The Inhabitants of Christchurch.

*Surrey*.—The Queen v. The Inhabitants of Rotherhithe.

*Plymouth*.—The Queen v. The Inhabitants of St. Andrew.

*Middlesex*.—The Queen v. Hammersmith Bridge Company.

*Surrey*.—The Queen v. The Inhabitants of Croydon.

*Wilt*.—The Queen v. The Inhabitants of Seend.

*Cambridgeshire*.—The Queen v. The Inhabitants of Melton (Suffolk.)

*Lancashire*.—The Queen v. Henry Whittles.

*West Riding, Yorkshire*.—The Queen v. The Inhabitants of Mirfield.

*Cambridgeshire*.—The Queen v. The Inhabitants of St. Ebbe.

*Gloucestershire*.—The Queen v. John Read and others.

*West Riding, Yorkshire*.—The Queen v. George Grant and others.

*Derbyshire*.—The Queen v. Robert Arkwright, Esq.

*Great Yarmouth*.—The Queen v. E. H. L. Preston.

*Kent*.—The Queen v. The Inhabitants of Maidstone.

*Northamptonshire*.—The Queen v. Lord and Steward of Manor of Weedon Beck.

*Lancashire*.—The Queen v. William Adam Hulston.

*Monmouthshire*.—The Queen v. The Inhabitants of Bedwely.

*Devonshire*.—The Queen v. The Inhabitants of Cheriton Fitzpaine.

*Sussex*.—The Queen v. The Inhabitants of Hamsey.

*Norwich*.—The Queen v. The Inhabitants of Fawncett, St. Mary.

*Norwich*.—The Queen v. Churchwardens, &c., of Tacolnestone.

*West Riding, Yorkshire*.—The Queen v. The Inhabitants of Rawden.

*Berkshire*.—The Queen v. The Inhabitants of Silchester.

*Devonshire*.—The Queen v. The Inhabitants of Totnes.

*Lincolnshire*.—The Queen v. William Clayton, jun.

*Yorkshire*.—The Queen v. John Blanshard and another.

*Carnarvonshire*.—The Queen v. The Inhabitants of St. Pancras, Middlesex.

*Essex*.—The Queen v. The Inhabitants of Hatfield Peveril.

*Liverpool*.—The Queen v. The Mayor, &c. of Liverpool.

*Breconshire*.—The Queen v. The Inhabitants of Brecon.

*Lancashire*.—The Queen v. George Knox and another.

*Yorkshire*.—The Queen v. Francis Cooper.

*Sussex*.—The Queen v. The Inhabitants of St. Thomas the Apostle.

*Wiltshire*.—The Queen v. The Inhabitants of Shalbourn.

*Denbighshire*.—The Queen v. The Inhabitants of Llandogget.

*Middlesex*.—The Queen v. The Inhabitants of St. Leonard, Shoreditch.

*Yorkshire*.—The Queen v. The Sheffield Canal Company.

*Middlesex*.—The Queen v. The Clerkenwell Improvement Commissioners.

*Lincolnshire*.—The Queen v. The Justices of Lincoln.

*Middlesex*.—The Queen v. The Inhabitants of Mile End Old Town.



## COMMON LAW CAUSE LISTS.

IN BANC.

## Queen's Bench.

NEW TRIALS.

Remaining undetermined at the end of the Sittings after Hilary Term, 1848.

Easter Term, 1846.

York.—Worth & another v. Gresham—Dundas.

Liverpool.—Doe d. Hayward v. Tinslay—Crompton.

Easter Term, 1847.

London.—Newton and another v. Belcher—Crowder.

Warwick.—Bower v. Wood—Whitehurst.

Lancaster.—Turner and another v. Hartley—Martin.

Liverpool.—Yates v. Fenton—Knowles.

Somerset.—The Queen v. Inhabitants of Tything, of East Mark—Cockburn.

Somerset.—The Queen v. Inhabitants of Tything of Moore—Same.

Trinity Term, 1847.

Middlesex.—Clayards v. Dethick and another—Miller.

Michaelmas Term, 1847.

Middlesex.—Hilton v. Earl Granville—Attorney-General.

Middlesex.—Same v. Same—Serjeant Talfourd.

Middlesex.—The Queen v. Fontaine Moreau—Sir F. Thesiger.

Middlesex.—Boosey v. Davidson—Serjeant Shee.

London.—Steele v. Hoe—W. H. Watson.

London.—Archibald v. Tatham—Sir F. Thesiger.

London.—Newton and another v. Liddiard—Chambers.

Suffolk.—Ringham v. Clements—Serjeant Byles.

Gloucester.—Pike v. Stevens, Esq.—Keating.

York.—Anderson v. Boynton—Martin.

York.—Charter, a pauper, v. Greame and another—Knowles.

Durham.—Humble v. Hunter—W. H. Watson.

Liverpool.—Bell, P. O. v. Lord Ingestre—Martin.

Liverpool.—Norris v. Fresh—Knowles.

Devon.—Dingle v. Baker—Serjeant Kinglake.

Devon.—Ford v. Widdicombe—Crowder.

Devon.—Same v. Same—Serjeant Kinglake.

Bristol.—Dyer v. Cowley—Same.

Kent.—Wray v. Toke and another—Lush.

Kent.—Giles, sen., and others v. Groves—Chambers.

Flint.—Edwards and Wife v. Williams—Attorney-General.

Flint.—Roberts v. Campbell—Welsby.

Hilary Term, 1848.

Middlesex.—The Queen v. Cutler and another.

Middlesex.—George v. Marquis Conyngham.

London.—Watson v. Earl Charlemont and others.

London.—Trimell v. De Burgh.

London.—Wilkins v. Wood

London.—Collard v. Lea.

London.—The Queen v. Charaetie.

Tried during Hilary Term, 1848.

Middlesex.—Mitchell v. Crudeson.

Middlesex.—Deacon v. Howdon.

ENLARGED RULES.

Easter Term, 1848.

First Day.

Ex parte William Williams, Esq., in re Philip Vaughan.

In the matter of the Midland Railway Company.

Gee v. Fearuley.

In re Batty and Thompson.

In re East and West India Docks and John Law.

In re East and West India Docks and William Bradshaw.

In re Wellealey.

Scadding v. Lrant.

In re Acworth and Dowsett.

The Queen v. Council of the Borough of Warwick.

Same v. Council of the Borough of Congleton.

Same v. Bishop of Rochester.

Same v. Robert Vickery.

Same v. Benjamin Parham, Esq.

Same v. Richard Brightman.

Second Day.

In the matter of Pauling and another, and the East Lancashire Railway Company.

In re William Haynes and another.

Holt and another v. Kershaw.

Nind v. Rhodes.

In re Goodacre and another.

In re Zerab and Smith.

In re Ranken and others.

The Queen v. James Mott.

Same v. Paynter, 2 rules.

Same v. Eastern Counties Railway Company.

Third Day.

The Queen v. Joseph Schlesinger.

Same v. Treasurer of the Borough of Oswestry.

Same v. Lords of the Treasury, Ex parte Dobbin.

Same v. Justices of Lancashire, Appeal of Inhabitants of Wolverhampton.

Same v. Ipswich and Bury St. Edmunds Railway Company.

Same v. Justices of Middlesex, Appeal of Robert Cook.

ND DEMURRERS

Easter Term, 1848.

Whitmore and Co.—Morris, Bt., v. Dk. of Beaufort, dem.

Philpot.—Morrell v. Biddle, special case.

Gough.—Bowers v. Nixon, dem.

C. Bell.—Clegg and others v. Dearden, special verdict.

Roy & Co.—Doe dem. Smith v. Birkin, special case.

Williamson & H.—Dails v. Lloyd and another, special case.

Ashley.—Freeman and Wife v. Bailey, dem.

Hawkins.—Conkes v. Sherrington, award.

Coode and Co.—Doe d. Millett v. Millett, special case.

Bolton.—Ostler v. Cooke and others, special

Chilton and Co.—Cutler v. Bower, dem.

Kinsey.—Doe d. Pennington v. Taniers, award.

Stands over till Trinity Term.

Nixon.—W. A. Ghushin v. Gregory and another, dem. to deft. Gregory's pleas.

Same.—Davison v. Wilson and others, dem.

Williams, J. Griffiths v. Lewis, sued, &c., dem.

Coppock.—Collett v. Curling, dem.

Gregory and Co.—Trinity House v. Beadle, special case.

Tilson and Co.—Green and others v. St. Katherine Dock Company, special case.

Newbon and E.—Hoare v. Silverlock, arrest of judgment.

Tippetts and S.—Laurie, Knt., and others, v. Bendall, arrest of judgment.

**Temple.**—*Carlewis v. Laurie and others*, dem. to defendant Temple's pleas.

**Furrier and W.**—*Moens and others v. Von Greisheim*, award.

**Lewis.**—*Wigan v. Gadderer*, dem.

**Madox and W.**—*Bourne v. Scott*, special case.

**Fry.**—*Reed v. Salter and another*, sued with another, dem.

**Malinson and S.**—*Palk v. Force*, sued with Ebbels, dem to defendant Force's pleas.

**Bridges and Co**—*Russell, extrix., v. Phillips*, Bt., special case.

**Palmer and Co.**—*Cousens v. Harris and wife and others*, dem.

**Westmacott.**—*Spencer and another v. Haggisdr*, error.

**Freeman and Co.**—*Bird and another v. Smith, c., &c.*, dem.

### Common Pleas.

*Remanet Paper of Easter Term, 1848.*

#### ENLARGED RULES.

To 1st day.—*Toby v. Lovibond*

*Batty, an infant v. Marriott.*

*Faithful v. Gingell.*

*Barber v. Gower.*

.. .. *Tolson v. Bishop of Carlisle & others.*

To 5th day.—In the matter of *Thomas Tindal*, gent., one, &c.; *Ex parte Lord Chandos.*

To 10th day.—In the matter of *Alexander Warrend*, gent., one, &c.

*New Trials of Hilary Term, 1847.*

*London*—*Smith and others, assignees, v. Watson.*

*London*—*Brown v. Chapman.*

*New Trials of Easter Term last.*

*Middlesex.*—*Morgan and another, ex. v. Earl of Abergavenny.*

*Middlesex*—*Goddard v. Dobson and another.*

*Middlesex.*—*Murray and others v. Hall.*

*London.*—*Nickels v. Ross, jun.*

*London.*—*Same v. Same.*

*London.*—*Humphreys v. Shuttleworth.*

*London.*—*Goodlake v. King.*

*London.*—*Hopwood v. Thorn.*

*London.*—*Barker v. Griffiths.*

*London.*—*Perry v. Parr.*

*London.*—*Blackie v. Pidding.*

*Norfolk.*—*Garrard v. Luck (in dower.)*

*Suffolk.*—*Vipan v. Gay and others.*

*Suffolk.*—*Same v. Same.*

(To stand over indefinitely by consent, per cur. 31st Jan. 1848.)

#### NEW TRIALS.

*Trinity Term last.*

*Middlesex.*—*Barnes, administrator, v. Ward.*

*Middlesex.*—*Young v. Geiger.*

*Middlesex.*—*Same v. Same.*

*London.*—*Alexander v. M'Kenzie, pub. offi.*

*London.*—*Belcher & others, assignees, v. Pytten.*

*London.*—*Doe dem Royle and others v. Allison.*

*London.*—*Same v. Same.*

*Michaelmas Term last.*

*Middlesex.*—*Hopwood v. Whaley.*

*Middlesex.*—*Collins v. Bennett and others, exors.*

*Middlesex.*—*Jenkinson and another v. Raphael.*

*Middlesex.*—*Joll and another v. Dowpes.*

*Middlesex.*—*Doe (Cotesworth and others) v. Skinner.*

*Middlesex.*—*Edmonds and others v. Challis and another.*

*Middlesex.*—*King v. Jones.*

*Middlesex.*—*Nind v. Arthur.*

*London.*—*Blandy v. De Bérgh.*

*London.*—*Powell v. Bradbury and another.*

*London.*—*Beard v. Egerton and others.*

*London.*—*Croll v. Edge.*

*London.*—*Mauger and another v. Brightman and others.*

*London.*—*Same v. Same.*

*London.*—*Smith v. Roberts and others.*

*London.*—*Daw, jun. v. Butler and another.*

*London.*—*Ladder and another v. Purday.*

*Hants.*—*Harvey v. Johnston.*

*Surrey.*—*Fitzgerald v. Fitzgerald.*

*Kent.*—*Lawes and another v. Brown and another.*

*Warwick.*—*Taitton v. King.*

*Leicester.*—*Edwards v. Lawless.*

*Norfolk.*—*Huggins, jun. v. Bailey.*

*Suffolk.*—*Young v. Ramcock.*

*Worcester.*—*Boraston v. Frances.*

*Stafford.*—*Humphries v. Longmore and another.*

*Monmouth.*—*Crosfield v. Morrison.*

#### Hilary Term last.

*Middlesex.*—*Craut v. Thompson.*

*Middlesex.*—*Same v. Same.*

*Middlesex.*—*Tappenden, a pauper, v. Ball.*

*London.*—*Schwartz v. Sharp and another.*

*London.*—*Benett v. The Peninsular and Oriental Steam Navigation Company.*

*London.*—*Crowther v. Solomons.*

*London.*—*Russell v. Briant.*

*London.*—*Tappin v. City Steam Boat Company.*

*London.*—*Cockburn and another v. Alexander.*

#### CUR. AD. VULT.

*Patteson and others v. Holland and others.*

(To stand over till the next *fa.* in Queen's Bench is disposed of.)

*Smart and another v. Sanders and others.*

*Owen v. Challis.*

*Dicker v. Jackson.*

*Couling v. Cox.*

*Brown v. De Winton.*

*Gay and another v. Lander.*

*Doe (Miller and others), v. Claridge.*

*Elderton v. Emmens, Sec. &c.*

*Doe (dem. Lord) v. Crugo.*

*Cocks v. Purday.*

*Valpy and others v. Sanders and another.*

*Smith v. Marsack.*

*Rizzi v. Foletti.*

*Howden v. Standish, Esq.*

#### APPEAL CASES, VIZ.

| No. | County.                               | Appellant. | Respondent |
|-----|---------------------------------------|------------|------------|
| 2.  | Northamptonshire }<br>Southern Div. } | Burton     | Langham    |
| 7.  | Worcestershire                        | Palmer     | Allen      |

#### DEMURRERS.

|                 |                |                                |
|-----------------|----------------|--------------------------------|
| Saturday        | April 15       | Motions in Arrest of Judgment. |
| Monday          | .. 17          |                                |
| Tuesday         | .. 18          |                                |
| Wednesday       | .. 19          |                                |
| Good Friday.    | Thursday .. 20 | No Sitting in Banc.            |
| Easter Eve.     | Friday .. 21   |                                |
| Easter Monday.  | Saturday .. 22 |                                |
| Easter Tuesday. | Manday .. 24   |                                |
|                 | Tuesday .. 25  |                                |

Wednesday, 26th April. Special Arguments.

*Smith v. Hestick.*

(Partly heard on 21st Jan

Engstrom and others v. Brightman and others.  
 Tripp v. Shrapnell.  
 Mortimer and others v. Hartley and others.  
 Doe (dem. Duntze) v. Duntze, Bart.  
 White and others v. Woodward.  
 Penrice v. Penrice.  
 Same v. Same.  
 Lord Newborough and others v. Schroder.  
 Bickford v. Parson and another.  
 Hoppe v. Gordon.  
 Humfrey, a lunatic, v. Gerf.  
 Kepp and another v. Wiggett and others.  
 Morrison v. Chadwick.  
 Frazer v. Hemsworth.  
 Sanderson v. Dobson.  
 Astley v. Fisher.  
 Reynolds v. Read.  
 Holland, W. v. King and another.  
 Lomax v. Landells.  
 Dean and Chapter of Ely v. Cash.  
 Nash v. Brown.  
 Kearns v. Durell.  
 Boden v. Smith and others.  
 Woolf v. City Steam Boat Company.  
 Monypenny v. Dering.  
 Vincent v. Bishop of Sodor and Man and others.  
 Pilgrim v. Southampton and Dorchester Railway Company.  
 Saturday, April 29 }  
 Wednesday, May 3 } Special arguments.  
 Friday . . . 5 }

### Exchequer of Pleas.

#### PEREMPTORY PAPER.

Easter Term, 1848.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

#### Rule Nisi.

22nd Jan. 1848.—Lewis v. Lord Suffield—Mr. Attorney-General and Mr. Temple.  
 18th Jan. 1848.—Norton v. Robinson and another—Mr. Cowling and Mr. Martin.  
 11th Jan. 1848.—Eaduille, P. O., &c. v. Truswell—Mr. T. Jones and Mr. Bovill.  
 28th Jan. 1848.—Chapman v. Humphery—Mr. Lush and Mr. Warren.  
 28th Jan. 1848.—Hanley v. Cassan—Mr. Hawkins and Mr. Bovill.

#### SPECIAL CASES.

##### For Judgment.

Doe d. Knight v. Spencer.  
 (Heard 15th Nov. 1847.)  
 Molton and wife, admix., &c., v. Camroux, sec., &c.  
 (Heard 17th and 21st Jan. 1848.)  
 Salkeld, clk., v. Johnston and others.  
 (Heard 26th Jan., 1848.)

##### For Argument.

Toynbee v. Brown, clk., by order of Nisi Prius.  
 South Eastern Railway Company v. Pickford and others, by order of Baron Alderson.  
 Belcher and others, assignees, &c., v. Bellamy and another, exors., by order of Baron Alderson.  
 Hamilton and others v. Spottiswoode, by order of Baron Parke.  
 Graham and others, assignees, &c., v. Allsopp, by order of Baron Alderson.

Doe d. Knight v. Samson and others, by order of Nisi Prius.

Furness and another v. Law, by order of Nisi Prius.

Royal Mail Steam Packet Company v. Acraman and others, by order of Nisi Prius.

Regina on the prosecution of Wm. Chaffers v. Good, claiming, &c, demurrer, by rule of court.  
 (Queen's Remembrancer's side.)

Allen v. Sharpe, by order of Nisi Prius.

Williams, exor., v. Griffith, by order of Nisi Prius.

Fenn v. Gould, by order of Baron Rolfe.  
 Lamprell v. The Guardians of the Billericay Union, special case on award.

Watson and another v. Pearson, by order of Baron Platt.

Duke, knt., and others v. Andrews, by order of Nisi Prius.

Nicholson v. Rayne, by order of Baron Platt.

Tomlinson and another v. Elster, by order of Nisi Prius.

Bielby v. Shepherd, by order of Baron Rolfe.

Griffith v. Pike, by order of Baron Parke.

Walker and others v. Macdonald, by order of Nisi Prius.

#### DEMURRERS.

##### For Judgment.

Coupland v. Challis.  
 (Heard 7th Dec. 1847.)

Venables, clk., v. East India Company.  
 (Heard 19th Jan. 1848.)

##### For Argument.

Doe v. Wellsman.

(Part heard 24th Jan., 1848.)

Crest v. Clark.

Richards v. Lord Suffield.

Smith and another v. Tateham and another, exors., &c.

Varley and others v. Leigh.

Cannam and others v. Lambert and others.

Patel v. Beville.

Pratt v. Pratt and others.

Scarisbrick and others v. Kennard and another.

Graham and another v. Ingleby and another.

Jones v. Morris and another.

(Replevin 1st action.)

Cann v. Hughes.

Serrell v. Allen, sued, &c.

Browning and others v. Hallett.

Biggs v. Easthope and another.

Williams v. Lord de L'Isle and Dudley.

Mounsey and another v. Perrott, jun.

#### NEW TRIAL PAPER.

##### FOR JUDGMENT.

Moved Easter Term, 1847.

Kingston, Lord Denman.—Boileau v. Rudlin—Sergeant Shee.

(Heard 22nd and 29th Jan. and 5th Feb. 1848.)

##### FOR ARGUMENT.

Gloucester, Mr. Justice Maule.—Christy and others (on affidavits) v. Powell and others—Mr. Whateley for defendant Pidgeon.

Moved Trinity Term, 1847.

Middlesex, Lord Chief Baron.—Jacobs v. Hyde—Mr. Hake.

London, Lord Chief Baron.—Chilton v. The London and Croydon Railway Company—Mr. Hill.

*Moved Michaelmas Term, 1847.*

*Middlesex, Lord Chief Baron.*—Potez v. Glossop—Mr. Cockburn.  
*Middlesex, Lord Chief Baron.*—Blackett, Bt., v. Wood—Mr. Watson.  
*Middlesex, Mr. Baron Platt.*—Morley v. Attenborough—Mr. Martin.  
*London, Lord Chief Baron.*—Burnside v. Dayrell—Mr. Crowder.  
*London, Lord Chief Baron.*—Same v. Same—Mr. Martin.  
*London, Lord Chief Baron.*—Waller v. Bishop—Mr. Crowder.  
*London, Lord Chief Baron.*—Fraser v. Lochner—Mr. Martin.  
*London, Lord Chief Baron.*—Hennah v. Clarke—Mr. Humphrey.  
*London, Lord Chief Baron.*—Percy v. Hopkins—Mr. Bramwell.  
*Yorkshire, Lord Chief Baron.*—Graburn v. Horberry—Mr. Buines.  
 (To stand over until after the decision in Salkeld v. Johnson.)

*Moved after the 4th day of Michaelmas Term, 1847.*

*Middlesex, Mr. Baron Platt.*—Ballinger v. Sheppard—Mr. Petersdorff.  
*Middlesex, Mr. Baron Platt.*—Maile v. Mann—Mr. O'Malley.  
*Middlesex, Mr. Baron Platt.*—Middleditch v. Ellis—Mr. Pashley.

*Moved Hilary Term, 1846.*

*Middlesex, Lord Chief Baron.*—Stephens v. Keating—Sir F. Thesiger.  
*Middlesex, Lord Chief Baron.*—Lewis v. Simpson—Mr. Chambers.  
*London, Lord Chief Baron.*—Fox and others v. Rigby and another—Mr. Attorney-General.  
*London, Lord Chief Baron.*—Willey v. Parratt and others—Sir F. Thesiger.  
*London, Lord Chief Baron.*—Clarke v. Wood and others—Mr. Crowder for defendants Wood and Smith.  
*London, Lord Chief Baron.*—Machin v. London and South-western Railway Company—Mr. Martin.  
*London, Lord Chief Baron.*—Connop v. Challis and another—Mr. Martin.  
*London, Lord Chief Baron.*—Herring v. Hudson and others—Mr. Watson.  
*London, Lord Chief Baron.*—Atkinson v. Pocock—Mr. Humphrey.  
*London, Lord Chief Baron.*—Chew v. Jones—Mr. Humphrey.  
*London, Lord Chief Baron.*—Daines v. Hartley and another—Mr. Chambers.

*Moved after the 4th day of Hilary Term, 1846.*

*Middlesex, Mr. Baron Rolfe.*—Gawler v. Chaplin and others—Mr. Humphrey.  
*London, Mr. Baron Rolfe.*—Kitchingman v. Skeel and another, exors., &c.—Mr. Lush.

## NISI PRIUS CAUSE LISTS.

## Queen's Bench.

## London.

## REMANETS FROM HILARY TERM.

|  |  |   |  |  |
|--|--|---|--|--|
| D. Richardson<br>Capes and S.  | Mackay<br>Blackmore  | (Inj.)<br>(Inj.)  | Brooke<br>Burton and others, execu-<br>tors, &c.   | Tres. Bazendale and Co.<br>Dt. Alban and B.<br>Dt. Smith   |
| Keene<br>Vincent and S.  | Dean<br>Franklin & another (stay-<br>ed)   | (inj.)<br>S. J.   | Grace<br>Davis and others  | Covt. Wm. Bevan<br>Dt. Wilde and Co.<br>Prom. Few and Co.<br>Van Sandau & Co.  |
| Lewis and S.<br>W. H. Green  | Brand<br>Bond  | (stayed)<br>(Inj.)  | Harper<br>S. J. Stanley  | Covt. Norris and Son<br>Covt. Gilbert, Hook, & Co.<br>Pro. Chester and Co.<br>Pro. Condell   |
| Phillips<br>Pearce and Co.<br>C. B. Wilson   | Hartley & another (stayed)<br>Robertson (stayed)   | S. J.<br>S. J.  | Manton<br>Dargan   | Prom. Fearon and C.<br>Trév. Wright and K.<br>Prom. Ashurst and Son<br>Pro. Sudlow and Co.<br>Pro. Campbell  |
| Jordeson<br>Hughes, K. and M.<br>Hook  | Gibbs<br>Cundell<br>Berkley<br>Conyngnam, Esq., and<br>others (Inj.)   | (stayed)<br>(stayed)<br>(Inj.)  | Aberdeen<br>Harrison and others<br>De Vear, sued, &c.<br>Macgregor (inj.)  |  |
| William Batty<br>Amory and Co.<br>Gell and H.<br>Warter<br>Marson and D.   | English<br>Taylor, (P. O.)<br>Dickinson<br>Sherlock and another<br>The Universal Salvage<br>Company                                    | S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J.                                     | Hales<br>Black<br>Bradley<br>Browne<br>Jones   |  |
| G. Ashley<br>Cox and S.<br>Watson, B. and Son<br>Cox and S.<br>Burrell and Son<br>Pearson<br>Starling<br>Maples and Co.<br>Bush and M.<br>W. Tate<br>Seard | Pridmore<br>Roberts and another<br>Hooper<br>Knight and others<br>Hooper<br>The Queen<br>Newman<br>Welch<br>Bush<br>Gravatt<br>Defries | S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J.<br>S. J. | Ward<br>Ridgway<br>Lea<br>Faith and another<br>Smith<br>John Thomas<br>Parry<br>Griffin<br>Morrison<br>Lea<br>Littlewood and another | Dt. Paxton<br>Pro. Elmslie and P.<br>Tro. Sharpe, F. and Co.<br>Pro. Lloyd<br>Covt. Farquhar and L.<br>Pro. E. Smith<br>Indt. Hobler<br>Hughes, K., and M.<br>Ca. B. Field<br>Pro. Weller<br>Pro. Elmslie and P.<br>Pro. Austin and H. |

|                     |   |   |                         |
|---------------------|---|---|-------------------------|
| Triston             | The Queen   | S. J. Hardey                                    | Consp. Walter and P.    |
| Williams and H.     | Udall and another   | S. J. Chodwick                                  | Ca. Cox and S.          |
| Smedley and R.      | Taunton and another   | S. J. Beavan                                    | Pro. Gill               |
| Tatham and Co.      | Sadler and another  | S. J. Cave and another                          | Covt. Walton            |
| Tilson and Co.      | Wilkins and another   | S. J. Morrison                                  | Pro. Bevan and G.       |
| Butler              | Ball  | Curling   | Pro. Curling            |
| Fry and Co.         | Roberts   | Carson  | Dt. Johnson and Co.     |
| Cooper              | Whitaker, jun.  | S. J. Cockerell and others                      | Pro. Oliverson and Co.  |
| Tatham and Co.      | M'Swiney  | S. J. The Royal Exchange As-<br>surance Company | Covt. Freshfield        |
| Boulton             | Hendle  | Rozenbaum                                       | Pro. J. A. Jones        |
| Lacy and B.         | Laurance and others   | S. J. Hughes, Esq.                              | Dt. Williams and McL.   |
| Pain and H.         | Green and another, as-<br>signees, &c.                              | S. J. Majoribanks and others                    | Tro. Westmacott and Co. |
| Geo. Holmer         | Sirr  | S. J. Sirr, Clk., admors., &c.                  | Dt. Maples and Co.      |
| Walcot and Co.      | Herrapath   | S. J. Boustead                                  | Meggison and Co.        |
| Bennett             | The Grand Trunk, or<br>Staffd. and Peterborough<br>Union Railw. Co. | S. J. Harman                                    | Dt. Richardson and Co.  |
| J. Bower May        | Larkins   | Collins   | Issue Ablett            |
| Atkinson            | Parker  | Haynes  | Cragg and J.            |
| Maples and Co.      | Small and others  | S. J. Nairne and another                        | Pro. Walton             |
| Same                | Same  | S. J. Gibson, jun.                              | Pro. Same               |
| Same                | Same  | S. J. Irving                                    | Pro. Pearce and Co.     |
| Crafter             | Ambrose   | Reynell   | Pro. In person          |
| Few and Co.         | Brett   | S. J. Thomson                                   | Pro. Thomas and M.      |
| Same                | Finlason  | Husband and another                             | Pro. Husband and W.     |
| Maples and Co.      | Gibson  | S. J. Surtees                                   | Dt. Stevens and G.      |
| Lacy and B.         | Bailey and another  | S. J. Taylor                                    | Pro. Phillipps and N.   |
| Bolding and P.      | Baum  | S. J. Ricketts and others                       | Pro. Lane and P.        |
| Tate                | Brown   | S. J. Barwell                                   | Pro. Amory and Co.      |
| Sherman             | Jones and another   | S. J. Hill                                      | Pro. G. H. Smith        |
| Amory and Co.       | Taylor, (P. O. &c.)   | S. J. Bradley                                   | Pro. Sudlow and Co.     |
| Dixon               | Marriott  | S. J. Baxter and others                         | Pro. In person          |
| In person           | Hornidge  | S. J. Bedborough                                | Ca. Depree              |
| Chubb               | Morley  | Duncombe  | Ca. R. K. Lane          |
| Hudson              | Shott   | South Eastern Railway<br>Company                | Pro. Tilleard and Co.   |
| C. Young            | Hatton  | Harrison  | Dt. Smith               |
| Savage              | Smythe  | Low   | Ca. Walton              |
| Burrell and Son     | Burrell   | S. J. Wheelton                                  | Pro. Wire and C.        |
| Same                | Same  | Haines  | Pro. Austin and H.      |
| Same                | Hooper  | S. J. Cumberlege                                | Pro. Jaques and Co.     |
| Mayhew, Son, and R. | Reeve   | Kemp and another                                | Pro. Burbidge—Bisgood   |
| Champion and B.     | Jones   | King  | Dt. Person              |

## Common Pleas.

|                   |                                   |   |                        |
|-------------------|-----------------------------------|---|------------------------|
| Bevan and G.      | Backhouse                         | Maitland                                | Prom. Loaden           |
| Cattarns and Fry  | Brown                             | S. J. Chapman                           | Prom. W. W. & R. Wren  |
| Vallance and B.   | Groom and others, assignees       | S. J. Hutton and others                 | Trov. Litklaters       |
| Wire and Child    | Patterson                         | S. J. Chadwick                          | Prom. Keddell and Co.  |
| C. W. & C. Lovell | Pinkus                            | S. J. London & Croydon Rail-<br>way Co. | Ca. Burchell and Co.   |
| Finch and S.      | Williams                          | S. J. Maitland                          | Ca. T. G. Everill      |
| Same              | Same                              | S. J. Betteridge                        | Same                   |
| Cotterill         | Navone                            | S. J. Hadden and another                | Cov. Johnson F. and L. |
| Hoppe and Boyle   | Gibson                            | S. J. Carter and another                | Ca. Ellis              |
| N. Bennett        | Davidson                          | S. J. Bohn                              | Ca. Smith and Son.     |
| Wilson and H.     | The Elect. Tel. Com.              | S. J. Nott and others                   | Ca. Wickens            |
| Same              | Same                              | S. J. Gamble and others                 | Ca. Same               |
| Same              | Same                              | S. J. D. P. Gamble and others           | Ca. Same               |
| Taylor and S.     | Levy                              | S. J. Alexander and another             | Prom. McLeod and S.    |
| G. and E. Kempson | Pritchard                         | S. J. Taylor                            | Covt. Walthew          |
| Adams             | Rizzi                             | Foletti                                 | Dt. Taylor             |
| Hill and Heald    | Miniaff and another               | S. J. Reade and another                 | Prom. Scott and Co.    |
| S. Yates          | Capua                             | Scott                                   | Prom. Hutchinson       |
| Oliverson and Co. | Hamilton                          | S. J. Cochran                           | Ca. Hill and Heald     |
| Newbon and Evans  | Thorn and another, as-<br>signees | S. J. Poynder and another               | Ca. Dolman and Co.     |
| Hook              | Griffin and another               | S. J. Hope                              | Dt. E. J. Rickards     |

|                       |                              |   |                               |
|-----------------------|------------------------------|---|-------------------------------|
| R. Thompson           | Johnson                      | Cooper  | Prom. J. A. Jones             |
| Minet and Smith       | Woolley and another          | S. J. Wrench and others                                 | Prom. Lane and P.             |
| Lawfords              | Lysaght and another          | S. J. Bramwell  | Prom. Paterson                |
| Sutton and Co.        | Camroux, Sec., &c.           | S. J. Young   | Covt. Coppock                 |
| F. West               | Fitch                        | S. J. Martyr  | Prom. Bristow and T.          |
| Hill and Heald        | Draper                       | S. J. Paris   | Prom. Wilkinson               |
| •Wire and Child       | Maxey                        | Thomas  | Dt. Sydney                    |
| Bell and Co.          | Foster                       | S. J. Bainbridge and another                            | Prom. Oliverson and Co.       |
| Oliverson and Co.     | Adam and another             | S. J. Freemantle, Bt., and others                       | Walford, Sol. Customs         |
| E. Isaacs             | Isaacs                       | S. J. Newman  | Prom. Dean and Co.            |
| Elmslie and Co.       | Connop and another           | Daniel  | Prom. Tyrrell                 |
| S. Walters            | Fox                          | Clark   | Prom. T. Clark                |
| Borradaile            | Phillpotts                   | S. J. Wray  | Prom. Fisher & De Jersey      |
| J. Manning            | Buxton                       | S. J. McGregor  | Prom. Gregory and Co.         |
| Lawrance and P.       | Graham and others, assignees | S. J. Cox and another                                   | Dt. Richardson and T.         |
| Marten and Co.        | Muggeridge and another       | S. J. Trier and others                                  | Prom. Tatham and Co.          |
| Cotterill             | Salisbury                    | S. J. Murray and others                                 | Prom. Sutton and Co.          |
| Same                  | Same                         | S. J. India and London Life Assurance Company.          | Covt. S. Walters              |
| Same                  | Same                         | S. J. Bleadon and others                                | Covt. Same                    |
| Same                  | Same                         | S. J. Cope  | Covt. Same                    |
| Same                  | Same                         | S. J. The Cath. Law, and Gen. Life Assurance Co.        | Covt. Same                    |
| Wilde, Reece, and Co. | Melville and another         | S. J. Doidge  | Covt. Hawkins, B. and Co.     |
| Druce and Sons        | Klockmann                    | S. J. Hutchinson  | Prom. Bell and Co.            |
| Sutton and Co.        | Stubbs and others, assigns.  | Fuller  | Prom. W. Murray               |
| Geo. Smith            | Simmons                      | S. J. London, Brighton, and South Coast Railway Company | Ca. Sutton, Ewens and Co.     |
| Stroughill            | Stroughill                   | S. J. McLeod and others                                 | Prom. Lloyd                   |
| Cotterill             | Gouin and others             | S. J. Moore   | Prom. Tilson and Co.          |
| Same                  | Same                         | S. J. Shadbolt  | Prom. Same                    |
| Same                  | Warren and another           | S. J. Peabody   | Prom. Oliverson and Co.       |
| N. Bennett            | Downs                        | Hanson, Sec. &c.  | Covt. J. Rogerson             |
| Barron and Clarke     | Barron, exor., &c.           | Reeve and another                                       | Dt. E. Benham                 |
| J. Appleton           | Ashton and wife              | London, Brighton, and South Coast Railway Company       | Ca. Sutton and Co.            |
| Same                  | Ashton                       | Same  | Ca. Same                      |
| Hutchinson and B.     | Adams                        | S. J. Froggatt  | Prom. G. R. Dodd              |
| Cotterill             | Butler and others            | S. J. The Corporatn. of the Roy. Exchange Assurance     | Covt. Freshfields             |
| Same                  | Same                         | S. J. Fox   | Prom. C. Walton               |
| Same                  | Hambro and another           | Gurney (chairman, &c.)                                  | Prom. Pearce, Phillips & [Co. |
| Ashurst and Son       | Wilde                        | Broackes  | Prom. Holmes                  |
| Stafford              | Cox                          | James, Esq.   | Prom. James                   |
| Taylor and S.         | Spurgeon, assignee, &c.      | Taylor  | Pro. Champion and B.          |

Exchequer of Pleas.

|                 |                      |                           |                                    |
|-----------------|----------------------|---------------------------|------------------------------------|
| Crowder and M.  | Tarte                | S. J. Barnes              | Pro. Young and Co.                 |
| Oliver          | Blagden              | S. J. Jones               | Iss. Smith                         |
| Hill and Smith  | Hale                 | S. J. Richardson          | Pro. Richardson, Smith, and Sadler |
| J. Wilkinson    | Harris               | Jones                     | Pro. Meredith & Reeves             |
| Lander          | Wadbrooke            | S. J. Tudor               | Pro. Gregory and Co.               |
| Cotterill       | Phillips and others  | S. J. Cookes and another  | Pro. Cox and Stone                 |
| Druce and Sons  | Frühling and others  | S. J. Dickson             | Pro. J. G. Walford                 |
| J. Bowen May    | France               | Evans                     | Pro. J. Bird                       |
| Same            | Same                 | Same                      | Pro. Same                          |
| Weymouth and G. | Green and another    | S. J. Dirom               | Pro. Sharpe and Co.                |
| Crowder and M.  | Euthoven and another | The Mines Royal Company   | Pro. Thomas and Son                |
| Capes and S.    | Black                | Humphrey                  | Pro. Pilcher                       |
| Tilson and Co.  | Fraser               | S. J. Spurgin and another | Pro. Fry and Co.                   |
| Same            | Same                 | S. J. Marlins and another | Pro. Same                          |
| Same            | Same                 | S. J. Spurgin and another | Pro. Same                          |
| Gant            | Carr and others      | S. J. Johnson, jun.       | Covt. Fry                          |
| Seaman          | Cates                | Sage                      | Ca. Hodgson                        |
| Tilson and Co.  | Pim                  | S. J. Hollingworth        | Pro. J. T. Moss                    |

|                          |                           |                             |                           |
|--------------------------|---------------------------|-----------------------------|---------------------------|
| Chester and Co.          | Copland and another       | S. J. McHenry               | Ca. Cornthwaite and W.    |
| Futvoye and S.           | Broadwood and another     | Willis                      | Dt. Bliss                 |
| Wright and Co.           | Jeffrys, (P. O. &c.)      | Kemp                        | Pro. Holman               |
| Seaman                   | Holdsworth and ors.,      | S. J. McAlpin and others    | Case, Grey                |
| J. C. and H. Freshfield. | Governor and Company of   |                             |                           |
|                          | Bank of Scotland          | Edwards                     | Sci. fa. Smith, W., & Co. |
| Tatham and Co.           | Baxendale and others      | Griffiths                   | Case, Smith and W.        |
| Bolding and P.           | Trinder                   | Chapman, admor., &c.        | Pro. Simpson and Co.      |
| Hodgson                  | Milbank                   | Harvey                      | Dt. Mawe                  |
| Freshfields              | Pearse and another        | Hughes and another          | Dt. Burrell and Son       |
| Bickley                  | Blackie                   | Fitzpatrick                 | Dt. Sowton                |
| Coverdale and Co.        | Langford                  | Sprigens                    | Pro. Tippetts             |
| Goddard and E.           | Reay and another          | Peters                      | Pro. Sutton               |
| J. B. May                | Stevenson                 | Norton                      | Robson                    |
| Walton                   | Herepath                  | S. J. Cowburn and another   | Pro. Walcot and Carr      |
| Schultz                  | Allen                     | Benbow                      | Ca. Madox and W.          |
| Colley                   | Chapman and others        | De Dopff                    | Dt. Todd                  |
| E. J. Sydney             | Pyke and another          | Burton                      | Pro. T. Lewis             |
| Walls and Son            | Dyer                      | Prew                        | Dt. Webber                |
| Van Sandau and Co.       | Follett & ors., assecs.   | S. J. Moore                 | Trov. Woolley             |
| Colley                   | Campbell                  | Pepper                      | Dt. Younge and H.         |
| G. Vincent               | Taylor                    | Browne                      | Pro. W. M. Wilkin         |
| Tatham and Co.           | Barker, (venue changed to |                             |                           |
|                          | Middlesex)                | Lord Conyngham              | Pro. Palmer and Co.       |
| Bickley                  | Castell                   | Gordon and another          | Tres. Digby               |
| Chester and Co.          | Hutchings                 | S. J. Stavert and others    | Ca. Gregory and Co.       |
| Surr and Gible           | Grout                     | S. J. Ricketts and others   | Pro. Crowder and Co.—     |
|                          |                           |                             | Tilson & Co.—Gregory      |
|                          |                           |                             | and Co.                   |
| J. Moon                  | Wills                     | Bland and another           | Ca. Fry                   |
| Miller and Carr          | Miller and another        | Atlee                       | Dt. J. Bell               |
| Phillips and Son         | Western Gas Light Co.     | Sir J. Hare                 | Dt. Davies and Son        |
| Gedye                    | Benneson and another      | Jewesson                    | Pro. Peddell              |
| Cotterill                | Cruikshank and ors.       | S. J. Powles                | Pro. Tatham and Co.       |
| Clarke, Gray, and Co.    | Bowe and ux.              | S. J. Brookes               | Dt. Weeks                 |
| E. K. Randell            | Garrod                    | S. J. Maclean and another   | Pro. C. and H. Hyde       |
| W. Hartley               | Brown and others          | Barlow                      | Pro. Mitton and Co.       |
| G. H. Lewin              | Tattersall                | Grant                       | Pro. Kedde and Co.        |
| Tatham and Co.           | Dart                      | Lovering                    | Pro. Norris and Co.       |
| W. Murray                | Christy                   | Handcock                    | Dt. Jennings              |
| Michael                  | Hart                      | S. J. McGeorge              | Dt. Nixon                 |
| Same                     | Same                      | S. J. Naters                | Pro. Same                 |
| M'Leod and S.            | Johnson                   | Crofts                      | Pro. Bell                 |
| Roy and Co.              | Shrewsbury and Birming-   |                             |                           |
|                          | ham Railway Company       | Balcombe                    | Dt. Goddard and Eyre      |
| McGregor                 | Watt                      | Edmundson                   | Pro. Hall and Co.         |
| Sole and Turner.         | Lewellin and others       | S. J. Pershouse and another | Ca. Sharp                 |
| Milne and Co.            | Ramsey and others         | Harrison and another        | Pro. Holme and Co.—       |
|                          |                           |                             | Chester and Co.           |
| Same                     | Brownlow                  | Lowe                        | Pro. Sharpe and Co.       |
| H. Jackson               | Cross                     | Parker                      | Tres. Jones               |
| Grahan                   | Dean (pauper)             | Nicholl and another         | Ca. Ruck                  |
| De Medina                | Mitchell                  | Clark                       | Dt. Bulton                |
| Jackson                  | Gomme                     | Braithwaite                 | Dt. Evans                 |
| Freeman                  | Watson, jun.              | Brown and another           | Dt. H. H. Brown           |
| In person                | Meggy                     | Laurie                      | Pro. Ker                  |
| Willoughby and J.        | Truscott and another      | Cartwright                  | Pro. Sprigg               |
| Cox, Sons and Co.        | Morris                    | Wilson                      | Tres. Wood and F.         |
| Crosby and C.            | Cook and others           | Nelson                      | Dt. Nettleship            |
| A. Burn                  | Wheeler                   | Skeggs, admors., &c.        | Pro. Thompson and D.      |
| Bell and Co.             | Browne                    | S. J. Griffiths             | Pro. Maples and Co.       |
| Spyer                    | Moss                      | S. J. Birmingham Plate and  |                           |
|                          |                           | Crown Glass Company         | Pro. Crosby and Co.       |
| Gale                     | Goss and another          | S. J. Christie              | Pro. Dodd and Co.         |
| Hine and Co.             | Daniels and another       | Meek                        | Pro. Wright and Co.       |
| Sangster                 | Fleischer                 | Patschke and another        | Pro. Yates                |
| Van Sandau and Co.       | Whitman and another       | Fergusson and others        | Pro. Brown                |
| Smith and W.             | Smith                     | Morecroft                   | Ca. Garry                 |
| Dodd and Co.             | Castrique                 | S. J. Carter                | Pro. Galsworthy           |
| Same                     | Borrie                    | S. J. Mongredien            | Dt. Pillian               |
| White                    | Hope                      | Turner and another          | Pro. Knight               |
| Fearnly                  | Hodge                     | Pontifex                    | Pro. Pontifex and Co.     |
| Same                     | Spottiswoode              | Adams                       | Pro. Hutchison            |
| Bower                    | Eatp and another          | S. J. Robertson             | Pro. Eden                 |
| Suk                      | Curlewis                  | Magan                       | Pro. G. G. Reynell        |



# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 22, 1848.

——— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## BILLS BEFORE PARLIAMENT RELATING TO THE LAW.

WE hope not to be misunderstood as complaining of the slow progress of legislation when we announce the fact, that although both Houses adjourn this day for the Easter Recess, no measure of any considerable importance connected with the administration of the law has yet obtained the assent of either House of Parliament. Since the commencement of the Session in November last, the only bill in which the legal profession can be said to be peculiarly interested which has obtained the Royal Assent is, — the Act for Regulating the *Queen's Prison*, (printed *ante*, p. 555). The Bills relating to the *Administration of Justice by Magistrates* out of Session and on Summary Convictions; the Special and Petty Sessions Bill; and the Protection of Justices Bill;<sup>a</sup> all of which were introduced by the Attorney-General, were referred to a Select Committee some months since, and we have since heard nothing of them. The Bill presented by Mr. Baines relative to the Administration of the *Poor Law* in disputed Cases of Settlement has also stopped in Committee; whilst in the Upper House the Bills brought forward by Lord Campbell for the Amendment of the *Criminal Law*,<sup>b</sup> the Prevention of *Unnecessary Actions*,<sup>c</sup> and enabling *Coroners to take Bail* in Cases of

Manslaughter, have not advanced beyond the same stage.

The Bishop of London's Bill for regulating the Trial of *Offences by Persons in Holy Orders*, which we have endeavoured to analyse and describe in a subsequent page, has not yet, we believe, been read a second time. Mr. Ewart's Bill to establish an *Appeal in Criminal Cases*,<sup>d</sup> and the Solicitor-General's Bill relating to the *Petty Bag Office*, also wait for a second reading.

The Bills proposed by Lord Nugent for regulating *Imprisonment before Trial* in Criminal Cases, and by Mr. Bouverie for the Reform of the *Ecclesiastical Courts*, have not yet been laid before Parliament, although promised before Easter.

Within the week preceding the adjournment of the House for the Easter holidays, two bills were introduced relating to subjects in which many of our readers take a lively interest. Lord Brougham has again presented a Bill for the regulation of the Court of *Bankruptcy* and the Amendment of the Bankrupt Laws, the provisions of which we shall take an early opportunity of laying before our readers; and in the House of Commons Mr. Cochrane obtained leave to bring in a bill to amend the *County Courts Act*. The proposed amendment is confined to cases in which persons are committed by an order of the County Court judge, and the bill provides that persons so committed shall be confined at the debtors' side of the prison, and that confinement under this act should in no case exceed

<sup>a</sup> *Ante*, pp. 390, 403, and 449.

<sup>b</sup> As to which, see *ante*, p. 532.

<sup>c</sup> See remarks, *ante*, p. 511.

<sup>d</sup> See the bill, *ante*, p. 428.

seven days. Whatever may be the merits of these provisions, it is very generally felt that there are many other points connected with the County Courts in which amendments are not less necessary, and it is to be hoped this opportunity will not be allowed to pass over, without some attempt to mitigate the admitted inconveniences and evils arising out of the operation of the act. The bill is ordered to be read a second time on the 3rd May next.

A Bill introduced by Sir W. Clay, to amend the Law relative to *Remedies against the Hundred* for Injuries to Property by Riotous Assemblages, is also deserving of attentive consideration. As we have already intimated, the Bill for the *Repeal of the Attorneys' Certificate Duty*, and some other measures in which the profession are peculiarly interested, will be brought under the notice of Parliament shortly after the Easter Recess. It was to be wished that the state of public business, and the disposition prevailing within the walls of parliament to postpone the discussion of questions not urgently and immediately pressing, had not combined to prevent measures of this description from being introduced and considered at an earlier period of the Session.

The series of political convulsions on the Continent of Europe which unexpectedly followed the re-assembling of Parliament, and the consequent derangement of our relations with foreign governments—to say nothing of the unsatisfactory state of some portions of the United Kingdom—go far to account for, if not to justify, the indifference with which certain subjects are now regarded, the importance of which, in periods of less excitement, would be universally admitted and appreciated. With the prevalence of such a state of feeling out of doors as well as in parliament, we confess we despair of finding any proposals for the amendment of the law fairly weighed or considered during the remainder of the Session.

Our anxious hope is, that no attempts will be made towards the close of the Session to hurry through bills affecting the administration of the law, which the profession and the public have not had ample means for considering and discussing. Much of the evil, injustice, and inconvenience arising from the provisions of modern acts of parliament, may be fairly ascribed to the facilities afforded for precipitate legislation towards the close of the Session of Parliament, when individual as well as official vigilance is exhausted or distracted by the multiplication

of subjects demanding attention. If a course productive of so much disappointment and mischief should be again adopted, we trust it will be resolutely and successfully resisted, and are not without hopes that the bill introduced by Lord Stanley to the House of Lords, for *regulating the Proceedings in Parliament*, will effectually mitigate, if it does not furnish a remedy for the evil to which we have so frequently directed attention.

## CLERGY OFFENCES BILL.

THE Bishop of London has undertaken the very delicate and difficult task of proposing to the House of Lords "An Act for regulating proceedings in the Case of Clerks in Holy Orders offending against the Laws Ecclesiastical." It was universally admitted that the Church Discipline Act (3 & 4 Vict. c. 86) did not operate satisfactorily, not, we believe, so much from any positive defects in its construction, as from the peculiar nature of the subject-matter of its enactments, the novelty of the attempt, and the disinclination manifested in adopting the principles and practice of the Courts of Law and Equity, in Courts established exclusively for the trial of Ecclesiastical Offenders. It is now proposed to repeal the Church Discipline Act, which has had a trial of seven years, and to retain such of its provisions as are deemed effective by embodying them in the new bill, which is much more elaborate, and contains nearly double as many clauses, as the act for which it is meant to be substituted.

After providing that the act of Hen. 7, c. 4, "for Bishops to punish Priests and other Religious Men for Dishonest Lives," shall continue repealed, and defining the terms "benefice," "bishop," and "diocese," the new bill enacts, that all proceedings against any Clerk of the United Church of England and Ireland, on account of heresy, false doctrine, blasphemy or schism, shall be conducted in the same Courts and in the same manner prescribed before the passing of the 2 & 3 W. 4, c. 92, "for transferring the powers of the High Court of Delegates both in Ecclesiastical and Maritime Causes to his Majesty in Council," except that an appeal shall lie to the Court of Appeal constituted by this act.

The next section relates to the constitution of the Court of Appeal, which is so singular that, we print it without any material abbreviation:—

"In all cases of proceedings taken in England against any clerk in orders, for heresy, false doctrine, blasphemy, or schism, an appeal shall lie from any decree having the force or effect of a definitive sentence to a Court of Appeal to consist of the Archbishops of Canterbury and York, the Lord Chancellor, or Lord Keeper or First Commissioner of the Great Seal, three of the Bishops of that part of the United Kingdom called England, the Master of the Rolls, the senior Vice-Chancellor, the three senior Puisne Judges of the Court of Queen's Bench, Common Pleas, and Exchequer respectively, the Dean of the Arches' Court of Canterbury, the Chancellor of the Diocese of London, and the Regius and Margaret Professors of Divinity in the Universities of Oxford and Cambridge; the three Bishops aforesaid to be appointed from a list of six, named by the Archbishop of Canterbury: no person to sit as one of the said Court of Appeal who is not a member of the United Church of England and Ireland."

The three bishops forming part of the Court of Appeal are to be appointed by her Majesty, and, with one of the Judges in Equity, two Puisne Judges, the Dean of the Arches, the Chancellor of London, and the two University Professors, are to constitute a quorum.

The appeal must be asserted within two months, and an inhibition taken out within three months, or the appeal is void, and the convicted clerk is not to perform any clerical duty pending such appeal.

With respect to clerks charged with offences against the laws ecclesiastical, except heresy, false doctrine, blasphemy, or schism, or with having been convicted of treason, felony, or perjury, or any other offence from which scandal may ensue to the Church, before any temporal court, the bill provides that

"The cognizance of the cause shall belong to the bishop of the diocese in which he shall hold any benefice, and in the case of a clerk holding no benefice to the bishop of the diocese in which he shall reside, and in case of holding two benefices in two dioceses in the same province then to the archbishop of that province, and if in two provinces in England then to the Archbishop of Canterbury, and if in two provinces in Ireland then to the Archbishop of Armagh, and if he hold no benefice, and have no known place of residence in England or Ireland, to the archbishop of the province in which the offence is charged to have been committed, or if the offence is charged to have been committed out of England and Ireland to the Archbishop of Canterbury, and such suit may be brought at the instance of the bishop having cognizance of the cause, or by any other person under the restrictions herein-after mentioned."

The bishop having cognizance of the cause, at any time before articles have been filed in the registry of the diocese, may institute a private inquiry, with the consent of the party accused, and at such inquiry witnesses may be examined upon oath, but no counsel, advocate, agent, proctor, or attorney shall be present at such proceeding, and if the accused party shall confess the truth of the charge in writing, the bishop may pronounce a summary judgment, which is to be effectual and conclusive.

When articles are exhibited against a clerk at the instance of any other person than the bishop having cognizance of the cause, the articles must be signed by an advocate, and security must be found for costs; and where a beneficed clerk is found guilty, the benefice may be sequestered to pay the costs of prosecution.

Articles exhibited against any clerk for any offence cognizable under this act are to be filed, and a copy served personally on the party accused, and the bishop may require such party to appear before him and answer the said articles either personally or by agent, and if the party appear and admit the truth of the articles, the bishop in person, or his vicar-general, shall pronounce sentence thereupon according to the Ecclesiastical Law.

In the absence of the bishop, or as his assessor, the bishop may appoint a vicar-general or commissary, provided he is an advocate of seven, or a barrister of ten, years standing; and to give effect to this provision, so much of an Irish Canon of 1634, as directs that "no person shall exercise ecclesiastical jurisdiction over a minister in a cause criminal, except he has been admitted in holy orders," is to be no longer in force.

The archdeacon is to summon incumbents for the purpose of electing 16 of their own body to form a jury list, out of whom four are to be chosen by lot to act as assistants to the bishop at every trial under this act. The proceedings with reference to the selection of the jury list of incumbents is thus provided for:—

"The bishop shall name a day on which there shall meet before him the Official Principal or Vicar-General, or one of the Archdeacons of the diocese, and the clerk to be tried, or his duly appointed proctor or attorney, all of whom shall be summoned under the hand and seal of the said bishop, and there shall then be drawn by lot, whether the party accused or his proctor or attorney attend or not, by the said Official Principal, Vicar-General, or Archdeacon, from

all the names then upon the diocesan jury list of incumbents residing within the archdeaconry wherein the offence shall be alleged to have been committed four names, and if the party accused shall object to such names or any of them, then the names so objected to shall be omitted and so many more shall be drawn as shall fill up the number unobjected to to four, and such remaining four shall be the jury for the trial of the said clerk; and they shall forthwith be summoned, by writ under the hand and seal of the said bishop, to attend and serve on the said trial: Provided always, that if any of the four persons whose names shall have been so drawn shall not be present when the Court shall sit, those of the four persons aforesaid who are present shall select one or more from the incumbents of the diocese as shall be necessary to make up the number of four: Provided also, that if the clerk to be tried shall not appear, by himself, proctor, or attorney, the jury list shall be drawn as herein provided."

The next section (21) enacts:—

"That the jury so constituted as aforesaid, being sworn, shall try and determine, according to the evidence, whether all or any and which of the articles have been proved, and shall give their verdict accordingly; and all questions of law which shall arise upon such trial as to the admissibility of evidence or otherwise, and in cases of conviction the nature and the amount of the punishment, shall be decided by the bishop, or his vicar-general or commissary, presiding in the court, and a note of every decision shall, whenever the accused, his counsel or agent, shall require it, be made and signed by such bishop, vicar-general, or commissary so presiding as aforesaid."

By the next section, the sentences pronounced by the bishop, vicar-general, or commissary, under this act, shall be as effectual and enforced by the like means as the sentence of an Ecclesiastical Court of competent jurisdiction.

The incumbents nominated on the jury list are bound to assist on pain of being punished for contempt in the Consistorial Court.

The 24th section declares what offences shall be punishable by deprivation or otherwise; it is as follows:—

"That it shall be lawful for the bishop personally to punish by deposition from the ministry any clerk in holy orders who shall be found guilty under this act of any offence for which he may by the Ecclesiastical Law be deposed from the ministry, and for the bishop personally, or by the vicar-general or commissary, to punish by admonition, suspension from or deprivation of any benefice holden by him, any such clerk who shall be so found guilty of incontinence, drunkenness, or simony, or who shall have been convicted of treason, felony, or perjury before any temporal Court, and also in

like manner to punish by admonition, suspension, or deprivation any such clerk found guilty under this act of any offence for which he may be so punished according to the Ecclesiastical Law: Provided always, that no vicar-general or commissary shall pronounce any sentence of deprivation without the sanction of the bishop, or archbishop in case of the incapacity of the bishop, and that no sentence of deposition from the ministry be pronounced but by the bishop in person, with the assistance of the archdeacon if he may be had conveniently, and of two other at the least grave ministers: Provided also, that every such sentence shall be notified by the registrar of the diocese wherein the same shall be pronounced to the bishop of every other diocese in England and Wales and Ireland."

And where it may appear to the bishop that scandal is likely to arise from the party accused continuing to perform the services of the Church, or that his ministration will be improper whilst such charge or appeal is pending, the bishop is empowered to inhibit such person from performing such services until sentence has been given in the cause on appeal; and provision is made for the performance of such services during the period of inhibition.

Clauses are also introduced for compelling the attendance of witnesses and production of documents, and it is declared that the evidence shall be taken in open Court, or before a Commissioner, and that witnesses shall be examined on oath or solemn affirmation, and be liable to punishment for perjury.

The occasions on which an appeal is to be allowed are pointed out by the 31st section, which runs thus:—

"It shall be lawful for any clerk proceeded against under this act to appeal to the Court of Appeal herein-after mentioned, on the ground that the verdict was against or not justified by the evidence, and for such clerk or for the party by whom the articles shall have been exhibited, where articles shall have been exhibited against any clerk at the instance of any person other than the bishop having cognizance of the cause, to appeal to the Court of Appeal herein-before mentioned, either on the ground that evidence material to the issue of the cause has been wrongfully received or rejected, or that the decision upon any other question of law, or any judgment or order given in the cause by the bishop, vicar-general or commissary, was not warranted by law, and to move the Court of Appeal to order that a new trial be had, or that the judgment or order complained of be vacated, annulled, or varied, as the case may require."

The next section provides that

"Every such appeal shall in England and Wales be to the Queen in council, and shall be

heard before the Judicial Committee of the Privy Council, and in Ireland to the Queen in her Court of Chancery, and shall be heard by a Court of Delegates as if this act had not been passed: Provided always, that if in the hearing of any appeal in the Judicial Committee of the Privy Council any question shall arise affecting doctrine, it shall be lawful for the said Court, if it shall think fit, to direct that a case be laid before the Court of Appeal constituted by this act, in order that the opinion of the said last-mentioned Court may be had thereupon."

Bishops who are of the privy council are to be of the judicial committee on appeals, and one bishop at least is to be appointed in every commission of delegates in Ireland.

To prevent frivolous appeals it is provided that there shall be no appeal upon any interlocutory decree or order without the leave of the bishop or judge, nor in any case unless the party prosecuting the appeal becomes bound with two sufficient sureties to pay the costs in case he shall not succeed in his appeal.

By section 36, no new evidence is to be brought or received before the Court of Appeal, but upon the consideration of the cause as transmitted, that Court may order or refuse a new trial, or affirm, reverse, annul, or vary the judgment or order complained of, and make such other orders in the cause as justice requires.

To prevent the sentence from being carried into execution pending the appeal, it is also provided:

"That whenever any clerk having been found guilty under this act shall, by himself or his counsel or agent, before the final sentence of the Court shall be pronounced, signify his intention to appeal, the bishop, or his vicar-general or commissary, shall either pronounce a sentence to be carried into execution at such time after the determination of such appeal as to him shall seem fit, or shall postpone the pronouncing of such sentence until after the determination of the appeal; and when the sentence itself shall be the ground of appeal, the judgment and sentence of the Court shall not take effect until after the determination of the appeal; and when the pronouncing of the sentence shall have been postponed, it shall be lawful, at any time after the determination of the appeal, for the bishop for the time being of the diocese in which the trial was had, or his vicar-general or commissary, to pronounce the sentence in like manner as if he had personally tried the cause; provided that if the sentence be pronounced after the decision upon the appeal, the party accused may, if he see cause, appeal against such sentence."

It is expressly declared by section 38, that no criminal proceeding is to be instituted in any Ecclesiastical Court against a

clerk of the United Church of England and Ireland, otherwise than under this act, with a saving of the ecclesiastical jurisdiction exercised by bishops in the colonies and foreign possessions. But the provisions of this act are not to interfere with persons instituting suits to establish civil rights.

Proceedings against bishops on account of charges brought against them for offences against the Ecclesiastical Laws are to be prosecuted in the same manner as before the passing of the act 2 & 3 W. 4, c. 92, and nothing in this act contained is to take away or abridge the authority which the archbishops and bishops now exercise personally, and without process in Court, over the clergy of their respective provinces or dioceses.

By a distinct clause, (13), it is also enacted, that in case of a benefice being sequestered on account of debt, the bishop may prohibit the clerk from performing duty, and appoint a curate.

Such is an outline of the new code intended to be established for the correction of offences committed by members of the ecclesiastical profession. The devotion of so large a portion of our space already to the subject, admonishes us that any critical examination of its details must be reserved for some future opportunity.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### NORTH AMERICAN PASSENGERS ACT, 11 VICT., c. 6.

An Act to make further Provision for One Year, and to the End of the then next Session of Parliament, for the Carriage of Passengers by Sea to North America.  
[28th March, 1848.]

1. 5 & 6 Vict. c. 107.—10 & 11 Vict. c. 103.—*No ship carrying passengers allowed to take more than a limited number according to space and tonnage.*—Whereas it is expedient to make further provision respecting the carriage of passengers by sea to certain parts of North America and the Islands adjacent thereto, and for that purpose to alter certain provisions of an act passed in the session of parliament held in the 5 & 6 Vict., intituled "An Act for regulating the Carriage of Passengers in Merchant Vessels," and of an act passed in the session of parliament held in the 10 & 11 Vict., intituled "An Act to amend the Passengers Act, and to make further Provision for the Carriage of Passengers by Sea:" Be it therefore declared and enacted by the Queen's most excellent Majesty, her and with the advice and consent of the spiritual and temporal, and Commons, in this

present parliament assembled, and by the authority of the same, That no ship carrying passengers on any voyage from any port or place in the United Kingdom, or in the Islands of Guernsey, Jersey, Alderney, Sark, or Man, to any port or place on the eastern coast of North America, or in the islands adjacent thereto, or in the Gulf of Mexico, shall proceed on such voyage with or shall carry more passengers on board than in the proportion of one passenger to every two tons of the registered tonnage of such ship; and that no such ship shall, whatever be the tonnage thereof, proceed on such voyage with or carry more passengers on board than in the following proportion to the space occupied by them and appropriated to their use, and unoccupied by stores not being the personal luggage of the passengers; (that is to say,) on the deck upon which the passengers live, one passenger for every twelve clear superficial feet, or on the orlop deck, if any, one passenger for every thirty such superficial feet; and that if any ship carrying passengers upon any such voyage as aforesaid shall carry any person or passenger beyond such proportions, or any of them, the master of the ship shall, for and in respect of every person or passenger constituting such excess, be liable to the payment of a penalty not exceeding 5*l.* sterling.

2. *Two children under a certain age to be computed as one passenger.*—That in computing the aforesaid proportions two children, each being under the age of 14 years, shall be computed as one person or passenger, and that children under the age of one year shall not be included in such computation.

3. *No ship carrying a certain number of passengers to proceed on her voyage without a ship's cook, to be approved by the emigration officer.*—That no ship carrying 100 or more passengers shall clear out or proceed on her voyage unless there shall be on board a ship's cook approved by the emigration officer at the port of clearance, and engaged for the purpose of cooking the food of the passengers, nor unless a convenient place shall have been set apart, and a sufficient apparatus provided for that purpose, to the satisfaction of the said emigration officer; and if any ship shall proceed on her voyage, not having on board such ship's cook and cooking apparatus as herein is required, the master of the said ship shall be liable to a penalty not exceeding 50*l.*

4. *Ships carrying passengers to have a duly qualified surgeon on board, else number to be limited.*—That whenever any ship shall carry 100 or more passengers on any such voyage as aforesaid, there shall be on board a surgeon duly qualified as hereinafter mentioned, or in default thereof it shall not be lawful for any such ship to carry more passengers on the deck upon which the passengers live than in the proportion of one passenger to every 14 superficial feet so occupied and appropriated as aforesaid.

5. *Certain children to be computed passengers when number limited.*—That in the calculation of such proportion every child above the age of one year shall be computed as one passenger.

6. *Qualification of surgeon.*—That every such surgeon as aforesaid shall be a person duly qualified by law to practise in the United Kingdom as physician, surgeon, or apothecary, and who shall not be objected to by the said emigration officer.

7. *No ship to proceed until the medicine chest and passengers have been inspected by a medical practitioner.*—*Remuneration of medical practitioner.*—*If no medical practitioner can be obtained, ship may proceed by permission of emigration officer.*—That, except as hereinafter provided, no ship shall clear out or proceed on any such voyage as aforesaid, until the said surgeon, or, in case of ships not carrying surgeons, until some medical practitioner, to be appointed by the said emigration officer, shall have inspected as well the medicine chest of the said ship as the passengers on board, and shall certify to the said emigration officer that the said ship contains a sufficient supply of medicines, instruments, and other things requisite for the medical treatment of the passengers during the intended voyage, and that none of the passengers appear to him likely, by reason of being affected by any infectious or other disease, to endanger the health of the persons on board: Provided always, that the master, owner, or charterer of every ship inspected by any medical practitioner so appointed as aforesaid shall pay to such medical practitioner a sum, to be fixed by the said emigration officer, not exceeding 20*s.* for every 100 passengers: Provided also, that in case on any particular occasion it shall be deemed by the emigration officer impossible to obtain the attendance of such medical practitioner, it shall be lawful for the master of any such ship to clear out and proceed on her voyage, on receiving from the said emigration officer written permission for the purpose.

8. *Passengers affected with diseases may be re-landed.*—*Penalty on master wilfully proceeding on voyage with diseased persons on board.*—That in case any such surgeon or medical practitioner shall notify to the emigration officer at the original port of clearance, or at any other port or place in the United Kingdom, into which the vessel may subsequently put, or in case the said emigration officer shall be otherwise satisfied, that any person about to proceed on such voyage as aforesaid is likely, by reason of being affected by any infectious or other disease, to endanger the health of the other persons on board, it shall be lawful for such officer to re-land, or cause to be re-landed, any such person, and such members of his family, if any, as may be dependent on him, or as may be unwilling to be separated from him; and no ship shall be cleared out or proceed on any such voyage so long as any such person or persons shall be on board, and the master of any such ship who shall wilfully proceed on the said voyage with any such person or persons on board shall be liable to a penalty not exceeding 50*l.* sterling.

9. *Passengers so re-landed entitled to recover passage money by summary process before two*

*justices.*—That any person or persons who shall be so re-landed as aforesaid, or the emigration officer on his or their behalf, shall be entitled to recover by summary process, before two or more justices of the peace, in like manner as in the said first-recited act is provided in the cases of monies thereby made recoverable, the whole of the monies which shall have been paid by them, or on his or their account, for his or their passage in such ship as aforesaid, from the party to whom the same may have been paid, or from the owner, charterer, or master of such ship.

10. *Her Majesty may issue orders in council prescribing rules, &c., for preserving order, &c., on board vessels.*—*Gazette, and copies printed by the Queen's printer, to be evidence of orders, &c.*—That it shall be lawful for her Majesty, by any order or orders in council to be by her made, with the advice of her Privy Council, to prescribe any such rules and regulations as to her Majesty may seem fit for preserving order, and for securing cleanliness and ventilation, on board of British ships proceeding on such voyage as aforesaid, and the said rules and regulations from time to time in like manner to alter, amend, and revoke, as occasion may require; and that any copy of such order in council contained in the London Gazette, or purporting to be printed by the Queen's printer, shall, throughout her Majesty's dominions, be received in all legal proceedings as good and sufficient evidence of the making and contents of any such order in council.

11. *Surgeon or master to exact obedience to rules and regulations.*—That in every British ship it shall be lawful for the surgeon, or, in ships not having a surgeon on board, for the master of any such ship, to exact obedience to all such rules and regulations as aforesaid, under the penalties next hereinafter provided.

12. *Penalty for refusing to observe rules and regulations.*—That any person on board such ship who shall neglect or refuse to obey any such rule or regulation, or who shall obstruct the master or surgeon of such ship in the execution of any duty imposed upon him by such rule or regulation, shall be liable to the payment of a penalty not exceeding 2l. sterling; and it shall be lawful for the justices of the peace in any part of her Majesty's dominions, before whom any person shall be convicted of such obstruction or resistance as aforesaid, to order such person, in addition to the penalty hereinbefore mentioned, to be confined in the common gaol for any period not exceeding one month.

13. *Colonial Land and Emigration Commissioners to prepare an abstract of acts and orders in council.*—*Such abstract to be posted up in each ship.*—*Penalty on master for neglect; and on person defacing abstract.*—That the said Colonial Land and Emigration Commissioners shall from time to time prepare such abstract as they may think proper of the whole or part of this and of the said recited acts, and of any order in council to be made as aforesaid; and that six copies of the said abstract, together

with two copies of this and of the said recited acts, shall, on demand, be delivered by the collector or comptroller of the customs of the port of clearance to the master of every ship carrying passengers on such voyage as aforesaid; and that such master shall, so long as any passenger be entitled to remain in the ship, keep posted, in at least two conspicuous places between the decks of the said ship, copies of such abstract, and shall be liable to a penalty not exceeding 40s. sterling for every day during any part of which by his act or default such abstract shall fail to be so posted; and that any person displacing or defacing such abstract so posted shall be liable to a penalty not exceeding 40s. sterling.

14. *How penalties to be recovered.*—That all penalties imposed by this act shall be sued for and recovered by such persons only, and in such manner, as in the said first-recited act is provided in the case of the penalties thereby imposed.

15. *Bond required by first-recited act to be security for observance of provisions of secondly-recited act and this act.*—That the bond required by the said herein-before firstly-recited act to be given in certain cases to her Majesty in respect of ships carrying more than 50 passengers shall include and be a security, not only for the matters and payments in the said act mentioned, but also for the faithful observance of the provisions as well of the said herein-before secondly-recited act as of this act, and of any rules and regulations to be prescribed by any such order in council as aforesaid, and further for the due payment by the master of any such vessel of all penalties which he may be adjudged to pay under or by virtue of the said herein-before secondly-recited act or of this act.

16. *Duties of emigration officer may be performed by his assistant.*—That all powers and duties given to or imposed upon the emigration officer herein-before mentioned may be exercised and performed respectively by his assistant in his absence, or, at ports where there shall be no such emigration officer, by the officer of the customs whose duty it may be to grant a clearance of such ship.

17. *Interpretation of act.*—That in the interpretation of this act the term "passenger" shall be held not to include the class of passengers commonly known by the name of cabin passengers; and the term "ship" shall include every description of sea-going vessel; and the term "master" shall include any person being in command of such vessel for the time being; and that, unless there be something in the subject matter or context repugnant to such construction, every word importing the singular number or the masculine gender only shall be construed to include several persons, matters, or things, as well as one person, matter, or thing, and females as well as males respectively.

18. *Exemption of ships carrying less than one passenger to 25 tons.* In certain actions as to ships carrying passengers, burden of proof to



*lie on defendant.*—That nothing in this act contained shall apply to any ship in which the number of passengers shall not bear to the registered tonnage a greater proportion than that of one passenger to every 25 tons: Provided also, that if in any action, prosecution, or other legal proceeding under this act any question shall arise whether any ship carrying passengers on any such voyage as aforesaid did or did not carry a greater number of passengers than aforesaid in proportion to the tonnage thereof, the burden of proving that the number of passengers so carried in proportion to the tonnage of the ship was not greater than that of one person to every 25 tons shall lie upon the person against whom any such action, prosecution, or other legal proceeding may be brought; and, failing such proof, it shall, for any such purpose as aforesaid, be taken and adjudged that the number of passengers so carried did exceed that proportion.

19. *Short title of act.*—That in all proceedings it shall be sufficient to cite this act by the title of "The North American Passengers Act."

20. *Continuance of act.*—And be it enacted, That this act shall remain in force for the period of one year from the passing thereof, and from thence to the end of the then next session of parliament.

## ATTORNEYS' CERTIFICATE DUTY.

DURING the course of the last week several further petitions for the Repeal of this Impost have been presented to parliament. Amongst others, from the large body of solicitors at *Liverpool*. Also, from the following places:—

|                    |                      |
|--------------------|----------------------|
| Abergavenny.       | Great Torrington.    |
| Ashby-de-la-Zouch. | Luton and Dunstable. |
| Burnley.           | Southampton.         |
| Christchurch.      | Wellington, Salop.   |
| Crowle.            | Worthing.            |

The number of petitions is now 217; and the signatures of the country petitions amount to 2,711.

The names of Mr. Cardwell and Mr. Willcox have to be added to the list of members who have presented petitions.

We understand that Lord Robert Grosvenor has very cordially accepted the charge of the bill for the Repeal of the Duty, and will move for leave to bring it in as early as the state of public business will permit.

We congratulate the promoters of the measure on having obtained the support of so distinguished a member as his lordship on their behalf. The selection has been very judiciously made. It would probably have been easy, some time ago, to have obtained the assistance of some member of the house belonging to either branch of the

profession; the one, however, might have been exposed to the charge of personal interest, and the other, to a breach of that etiquette which seems to have tied the tongues of our most eloquent advocates, whenever the interests of the larger branch have come into question.

Again, many bankers, merchants, or manufacturers might have readily been induced to undertake a task so palpably founded in justice; but it was well worth a few weeks' delay to secure the important sanction of the noble representative for the metropolitan county, and a member of one of the highest families in the kingdom. Those who have been carping at the supposed slow progress of the parties entrusted with the preparation of the bill, and who, (whilst professing friendly support,) have censured every step that has been taken, will probably now admit that they have been in error, and that the wisest course has after all been adopted.

## SUPERIOR AND INFERIOR COURTS.

*To the Editor of the Legal Observer.*

SIR,—In your observations on "the Palace Court," in your number of the 12th February, you state that the Attorney-General has intimated an intention of proposing some remedy for the monopoly of the four barristers and six attorneys of that court, but that the difficulty was the compensation to which they were entitled. And in the leading article of your following number, on the "Fees and Salaries in the County Courts," you tell us that it is more than insinuated that the new judges are overworked. And you do yourself more than insinuate therein that the salary of 1,200*l.* is not sufficient.

Now, I take leave to remind you of my suggestions for cheapening the proceedings of small actions in the superior courts, which you did me the favour to insert in your number of the 27th of November last, the principle whereof is in accordance with what you have yourself often earnestly advocated, and which I humbly conceive would cure almost all complaints, without disturbing either the Palace Court or the County Courts, as they would operate as a kind of equitable adjustment of the whole affair; because, by carrying out my suggestions, the costs of small actions in the superior courts would nearly correspond with those in the new courts, and by restoring the late jurisdiction of the former, or making that of the latter concurrent, instead of exclusive as at present, the country would be saved the cost of compensation to the Palace Court, as well as the additional salaries to the judges and officers of the County Courts, (which you seem to consider necessary,) without materially diminishing the business of those courts,—which doubtless will always have sufficient occupa-



tion. Consequently, why should they be permitted to monopolise nearly two-thirds of the legitimate business of the superior courts? As evidence of this, only behold the almost utter emptiness of nearly all the offices thereof, whilst the County Courts are filled to overflowing, to the great inconvenience of the suitors thereof. And therefore, had they less to do, the more tolerable would it be for all parties, (salaries being substituted for fees).

Besides, another serious evil of the new system, and one, I believe, of not uncommon occurrence, is that of a man having a just demand of 25*l.* or 30*l.*, for which he is compelled to sue either in the inferior court, and lose the overplus, or in the superior, at the risk of losing both the overplus and the costs also, if he fail to obtain a verdict for 20*l.* or upwards, (which often happens from various causes,) unless the judge certifies, which I have not heard of any one yet doing. Doubtless, their lordships think rightly, that people ought not to go to law; but if they will, why should not a creditor be allowed to resort to whichever court he prefers as most convenient, especially when the defendant is not prejudiced thereby; neither ought the plaintiff, by being put to any unnecessary expense in the recovery of a small no less than a large debt. The old Courts of Request were mostly all concurrent, why then should the new be compulsory?

The Lord Chancellor, on passing the County Courts Bill, stated that the country was very much in want of them; if so, where was the necessity or consistency of arming the new courts with such arbitrary and prohibitory powers? The amazing increase of business in the Palace Court is evidence of quite a negative nature, as to the want of such courts, to say nothing of the many complaints thereof. Some former Chancellors and Judges,—legal “lights of other days,”—would have doubted the necessity of so sweeping a measure, and also of its effects on the interests of the profession, which, however, appears now to be but little regarded in any quarter, although it contributes so largely towards the support of the state, and yet is so intolerably taxed. Neither are the new courts beneficial, but, as I hear, positively detrimental, to a poor man; because, win or lose, he must pay at every step, whereas few attorneys, if unsuccessful, exacted the full penalty of their bond, although doubtless there are some Shylocks in the law as well as in most other professions and trades.

The legislature has retraced its steps upon some occasions, and it might also do so most beneficially upon this, as I am convinced that the alterations proposed would be *pro bono publico*, or at least of that portion of it whose complaints (amongst others) of the trouble and loss of time, in attending a day or two at a County Court, are already nearly as long and loud as if such attendance was obliged to be given at the Old Bailey, the universal objection to attending which has long been such, that thieves frequently escape punishment altogether. Indeed, most persons have a similar objection

to attend any court whenever they are likely to be detained long; whereas, by merely sending a “lawyer’s letter,” issuing a writ, or proceeding to judgment, at nearly the same expense, and in less time, than in a County Court, all debts really recoverable might be thus expeditiously and quietly obtained in a superior court, without any trouble at all to the creditor. Such is a sample of only some of the evils of the new law, which was made and passed expressly for the “more easy and speedy recovery of small debts.”

I trust that you will continue to advocate the principle of my suggestions for modifying and restoring the machinery of the superior courts, so as to suit the convenience and silence the clamour of that part of the public which complains that the practice of the new courts is neither easy nor speedy, and which will also materially benefit all such persons as are at present liable to be sued in the superior courts, and especially the poorer portion thereof.

INDEX.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE annual general meeting of the members of this association was held on Wednesday, the 19th instant, at the Gray’s Inn Coffee-house: Mr. Sudlow, one of the Vice-Presidents, in the chair. The Report of the Committee of Management was read by the Secretary, comprising—

1st, The causes and circumstances which induced the formation of the Metropolitan and Provincial Law Association. 2nd, The measures that have been adopted for establishing and extending the association, the constitution of it, when formed, and the objects it proposes. 3rd, What has been since done towards the collection of information to be submitted to Parliament, and including the appointment of sub-committees for promoting the various purposes of the association. 4th, The labours of the Committee of Management and its several sub-committees, embracing Reports on the Bills in Parliament relating to the Law,—on the defects in Equity procedure, and in the Common Law Practice,—with the proposed remedies and improvements in each,—and a brief notice on the subject of Conveyancing. 5th, Inquiries into the office and status of attorneys, and the grievances of the profession. And 6th, Remarks on the necessity and importance of the association, its present state, and future prospects, and the measures recommended for furthering the purpose for which it was formed.

Resolutions\* were passed to the following effect:—The Report of the Committee was approved, printed, and ordered to be circulated.

The present members of the Metropolitan Committee and the Provincial Committee, with the substitution of five new members in lieu of those who had retired, were re-elected.

Auditors of the accounts of the association were also appointed.

The Committee of Management were authorized to elect a Secretary for the association at such salary as they should deem proper, and to give such remuneration for past services as they thought right. And to allow to the Local Committees such sums out of the subscriptions of their respective districts for the expenses incurred by such Local Committees as might be deemed proper.

The thanks of the meeting were voted to the Council of the Incorporated Law Society for their valuable sanction and assistance, which had essentially contributed towards removing the difficulties attendant on the formation of the association.

The thanks of the meeting were also given to the Honorary Secretary for his able and indefatigable services.

The meeting was addressed upon these several resolutions, and the subjects to which they related, by numerous members of the association, viz. :—

Mr. Anderton, Mr. Bower, Mr. W. L. Donaldson, Mr. Edwin Field, Mr. J. Hudson, Mr. Jas. Mathews, Mr. H. Nicol, Mr. George Pocock, Mr. J. H. Shaw of Leeds, Mr. Sudlow, Mr. O. Webb, and Mr. G. E. Williams of Cheltenham.

We hope in our next number to give a report of the principal points urged in the speeches of these gentlemen. For the present, we have room only to say that there was a most entire unanimity in the various objects of the association. The several measures adopted by the Committee of Management, and the recommendations of the several sub-committees, were highly approved of.

The following gentlemen were also present at the meeting :—

Mr. W. Bell, Mr. H. Bedford, Mr. Boys of Margate, Mr. Brockman of Folkstone, Mr. G. Faulkner, Mr. Hodgson of York, Mr. H. H. Statham of Liverpool, Mr. Sudlow, jun., of

Manchester, Mr. B. F. Watson, and several other gentlemen.

The meeting, which lasted nearly three hours, concluded with presenting its cordial thanks to the chairman and the committee of management.

### EASTER TERM EXAMINATION.

THE Examiners have appointed Tuesday, the 2nd day of May next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, for the examination of persons applying to be admitted attorneys. The examination will commence at 10 o'clock precisely.

Articles of clerkship and assignment, (if any,) with answers to the questions as to due service, should, according to the regulations approved by the judges, be left with the Secretary, on or before Saturday the 22nd instant.

Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

The following regulations have been issued by the Examiners :

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the heads of inquiry,—*Common Law and Equity* being two thereof.

### CANDIDATES WHO PASSED THE EXAMINATION.

*Hilary Term, 1848.*

| <i>Names of Candidates.</i>      | <i>To whom Articled, Assigned, &amp;c.</i>                                  |
|----------------------------------|---|
| Adams, James Patten . . .        | James White Adams, Martock; Frederick Purvis, 4, Bedford-row                |
| Anderson, Henry . . .            | Robert Henry Anderson, York   |
| Arnold, George . . .             | William Gorham, Tonbridge; John Carnell, Tonbridge                          |
| Austin, Charles Addington . . .  | Edward Chitwell Williamsou, Luton   |
| Avis, Henry . . .                | Thomas Muntings Vickery, 25, Lincoln's-inn-fields                           |
| Bagshaw, Thomas Pittard . . .    | John Bagshaw, Manchester  |
| Baker, Joseph . . .              | William Haines, Birmingham  |
| Banks, William Lawrence . . .    | Richard Banks, Kingston; Christopher Proctor, 10, New-square, Lincoln's-inn |
| Barkworth, Joseph Charles . . .  | Thomas Phillips Waite, Louth; Frederic Vallings, 2, St. Mildred's-court     |
| Bell, John Gillam, jun. . .      | Stephen Adcock, Cambridge   |
| Berners, Henry, jun. . .         | Benjamin Dixon, Wakefield   |
| Blesymire, Edward . . .          | William Blesymire, Penrith  |
| Boyd, James . . .                | Andrew Kennedy Hutchison, Crown-court                                       |
| Boys, Alfred William . . .       | William Wilks Dyne, 61, Lincoln's-inn-fields                                |
| Bramwell, William Henry . . .    | John Bramwell, Durham   |
| Breddibb, James Dudden, jun. . . | John Rutter, Shaftesbury  |
| Brooke, William Henry . . .      | Thomas Good and John Belton, Dudley   |
| Brooks, William . . .            | James Brooks, Odiham  |
| Burridge, Arthur . . .           | Thomas Lyon, Yeovil   |

|  |  |
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| Byam, Joseph Davies . . . .              | Joseph Baker Grindon, Bristol  |
| Catterall, Paul, jun. . . .              | Peter Catterall, Preston   |
| Chew, Townley . . . .                    | John Jaques, 8, Ely-place; William Christopher Chew, Manchester                                  |
| Chippindale, Edward . . . .              | William Hine, Charterhouse-square  |
| Cook, George . . . .                     | Roger Gadsden, Furnival's-inn  |
| Cowburn, George . . . .                  | William Cowburn, Lincoln's-inn-fields; Daniel Smith Bockett, Lincoln's-inn-fields                |
| Cressey, George Leister . . . .          | John Harrison Thomas, York   |
| De Boos, Thomas John Redman              | Charles Boydell, 41, Queen-square, Bloomsbury  |
| Dobson, John . . . .                     | Matthew Bloome, Leeds  |
| Eastley Yard . . . .                     | Parmenas Pearce, Newton Abbot  |
| Enston, Charles . . . .                  | Henry Denton, 6, Lincoln's-inn   |
| Ellis, Richard . . . .                   | George Marten, Mincing-lane  |
| Faithful, Frederick Dundas . . . .       | George Pearson Nicholson, Wath-upon-Deerne; Daniel Smith Bockett, 60, Lincoln's-inn-fields       |
| Frost, Horace . . . .                    | Charles Frost, Kingston-upon-Hull  |
| Gale, Frederick . . . .                  | William Ford, 4, South-square, Gray's-inn; William Samuel Currey, Parliament-street, Westminster |
| Gard, Edward Oram . . . .                | Samuel Rouse, Plymouth; Stephen Walters, 36, Basinghall-street                                   |
| Goldshede, Theodore . . . .              | Edward James Sydney, 46, Finsbury-circus; Henry Richards, 7, Chandos-street, Cavendish-square    |
| Goodman, John Festing . . . .            | William Clark Merriman, Marlborough; Henley Smith, 4, Wernford court                             |
| Grevile, Giles . . . .                   | Charles Grevile, Bristol   |
| Guppy, Alfred . . . .                    | Henry Charles Mules, Honiton; Philip Mules, Honiton  |
| Guy, John Pattinson . . . .              | George Leeman, York  |
| Haines, Frederick . . . .                | Edward Pann and John Hartherly, 5, Great Marlborough-street                                      |
| Harrison, Francis John . . . .           | Henry Walker, 5, Southampton-street  |
| Hawkins, John William . . . .            | John Hawkins, New Boswell-court, Lincoln's-inn   |
| Hodgson, Richard Huddleston . . . .      | William Wells, Bradford  |
| Holtord, George . . . .                  | Henry Bury, Manchester   |
| Homfray, David . . . .                   | Daniel Breese, 15, Lincoln's-inn-fields  |
| Hootman, Henry . . . .                   | John Bury, Bewdley   |
| Husband, Sydney Otway . . . .            | Thomas Dickinson Browne, Wem   |
| James, Henry Mountrich . . . .           | Harvey James, Exeter; Edmund William Paul, Exeter  |
| Johnson, Edward Davey . . . .            | William Henry Smith, 12, Bedford-row   |
| Johnson, James Henry . . . .             | William Ghrimes Kell, 43 Bedford-row   |
| Jones, John Humphrey . . . .             | Cyril Williams, Pwllheli   |
| Jones, John Parry . . . .                | James Vaughan Horne, Denbigh; Christopher Procter, 10, New-square, Lincoln's-inn                 |
| Jubb, Henry . . . .                      | George Pearson Nicholson, Wath-upon-Deerne   |
| Justice, Walter . . . .                  | Thomas Francis Justice, late of 17, Bernard-street   |
| Keeling, Frederic John . . . .           | Frederic Page Keeling, Colchester  |
| Latham, William Frederick . . . .        | Arthur Walker, 13, King's-road, Gray's-inn   |
| Lawrence Charles William . . . .         | Charles Lawrence, Cirencester; Robert Riddell Bayley, 4, Basinghall-street                       |
| Lawrence, Nathan'el Tertius . . . .      | William Talbot, Kidderminster  |
| Leith, Frederick . . . .                 | John Mourilynn, Sandwich; Joseph Raw, 5, Furnival's-inn  |
| Maxwell, William Albert . . . .          | John Serjeant, Ramsey  |
| Mellor, John William . . . .             | William Grimwood Taylor, 14, John-street, Bedford-row  |
| Milne, William Henry . . . .             | Edward Chippindall Milne, Manchester   |
| Marfleet, John Isaac . . . .             | William Slater, Manchester   |
| Neale, William John . . . .              | John Mee, East Retford   |
| Newman, Robert Rutland . . . .           | William Thomas Longbourne, 4, South-square, Gray's-inn   |
| Nicholson, Samuel Pearce . . . .         | Samuel Rowles Pattison, Launceston   |
| Padley, Frederick John . . . .           | John William Dunby, Lincoln  |
| Pattison, William . . . .                | John Steel, Cuckermouth; Charles Bischoff, 19, Coleman-street, City                              |
| Penny, Arthur Edmund . . . .             | Richard Barker, Chester; Charles Wilson, 13, Bedford-row   |
| Picard, Alfred Christopher . . . .       | William Phelps, 14, Red-lion-square  |
| Pike, Francis Christopher Vernon . . . . | Francis William Pike, 26, Bedford-row  |
| Pratt, James, jun., . . . .              | George Henry Watson, York; William Fox Clarke, York  |
| Priddy, Henry Granger . . . .            | Alfred Hall Browne, Wolverhampton  |
| Price, Richard Hope, jun. . . .          | John Bickerton Denkin, and William Dent, Wolverhampton   |
| Plews, Richard . . . .                   | Edward Lawrence, 14, Old Jewry Chambers  |
| Rogers, John, jun. . . .                 | John Hayward, Oswestry   |
| Roose, Francis . . . .                   | John Iderton Burn, 6, South-square and Brighton  |
| Saltwell, William Henry, jun. . . .      | John Henry Denbow, 1, Stone-buildings, Lincoln's-inn   |
| Sandilands, Walter Samuel Tollet . . . . | John Teesdale, 31, Fenchurch-street; John Marmaduke Teesdale, 31, Fenchurch-street               |
| Shackles, Charles Frederic . . . .       | George Lawrence Shackles, Hull   |
| Sharpe, Benjamin Thomas . . . .          | Henry Mooring Aldridge, Poole  |
| Sladen, Douglas Brooke . . . .           | William Tanner Neve, Cranbrook; Thomas France, 24, Bedford-row                                   |
| Smart, Collin . . . .                    | Robert Smart, Sunderland   |
| Smith, William Frederick . . . .         | William Smith, Hemel Hempstead   |
| Syms, John Lockhart . . . .              | Charles Davison Scott, 7, Furnival's-inn   |

|                                 |   |
|---------------------------------|---|
| Taylor, William . . . .         | Gustavus Thomas Taylor, 18, Featherstone-buildings  |
| Tizard, John . . . .            | Richard Curtis Phillips, Weymouth   |
| Wadham, James Davison . . . .   | William Ody Hare, Bristol   |
| Walker, John Fraser . . . .     | William Bartholomew, 3, Gray's-inn-place; Thomas Birch, 20, Great Marlborough-street; re-assigned to William Bartholomew. |
| Walton, Edward . . . .          | David Erskine Forbes, 8, Warnford-court, City   |
| Ward, Robert Arthur . . . .     | Gregory Faux, Thetford; James Crowdy, 25, Old Fish-street; and Hanslip Palmer, Upwell                                     |
| Webb, Josiah Joseph . . . .     | David Howard, Portsea   |
| Wheeler, William . . . .        | Robert Trappes, Clitheroe   |
| Whitehouse, Wm. Matthew Mills   | Thomas James Rooke, 3, Raymond-buildings  |
| Whiting, Charles David . . . .  | Joseph Edward Marshall, Cambridge   |
| Williams, Richard . . . .       | Robert Frodshaw, Liverpool  |
| Wilson, Thomas Abrahall . . . . | John Abrahall Wilson, Worcester   |
| Windsor, William . . . .        | Samuel Danks, Birmingham  |
| Windus, John William . . . .    | Robert James Butt, 97, Great Russell-street   |
| Withall, William Henry . . . .  | John Gregson, Bedford-row   |

## ADMISSION OF ATTORNEYS.

*Easter Term, pursuant to Judges' Orders.*

### Queen's Bench.

#### *Clerks' Names and Residences.*

#### *To whom Articled, Assigned, &c.*

|  |   |
|--|---|
| Eaton, Thomas, 11, Gray's Inn Square; and Lyon's Inn . . . . .                     | Edward Smith, King's Arms Yard.<br>Benjamin Field, Lincoln's-Inn-Fields.<br>C. R. Randall, Tokenhouse Yard. |
| Greaves, Thomas, 13, Regent Street; Kingston-upon-Hull . . . . .                   | James A. Jackson, Parliament Street; Kingston-upon-Hull.  |
| Norton, John, 10, Brecknock Crescent, Camden Town; and Bloomsbury Street . . . . . | Thomas Pinchard, Wolverhampton.   |
| Spyer, Sydney John, 7, Bedford Place, Russell Square . . . . .                     | Jones Spyer, Broad Street Buildings.  |

## RENEWAL OF ATTORNEYS' CERTIFICATES.

*Last day of Easter Term, 1848.*

### Queen's Bench.

Armitage, Edward, Moraston House.  
Atkinson, Josias, Skipton.  
Herring, Philip, 9, Norfolk Road, St. John's Wood; Richmond Cottage, Walworth.  
Jukes, James Augustine, 25, King Street, Clerkenwell; and 9, Little Saint Thomas Apostle.  
Latham, John, Chorley.  
Osborne, John Francis, 31, Gibson Square.  
Williams, George Edward, 9, Lansdown Terrace, Caledonian Road, Pentonville; 30, Cardington Street, Euston Square.  
Welch, Charles Hewit, Ashbourne.

*Before a Judge at Chambers, 13th day of May, 1848.*

### Queen's Bench.

Bridgman, John Vickry, Tavistock, Moreton-hampstead, and Huddersfield.  
Barrow, Samuel Howslip, Davies Street, Berkeley Square.  
Barre, Edward, Handsworth, near Birmingham.

Bell, William, Leeds.  
Brown, Richard Cristie, Liverpool.  
Chapman, Frederick, 14, Frith Sreet, Soho.  
Hutchinson, Thomas, Hartlepool.  
Kinch, Thomas Edge, Deddington.  
Lindsell, William, 68, Fortress Terrace, Kentish Town, and Waterloo Cottage.  
Rouse, Theodore, 27, Newton Street, Holborn; and Ruthin.  
Russell, Joshua, Manchester.  
Smith, John Browne, Hanover Square, Dartmouth; Ashburton; and Shaldon.  
Turner, William Nicholas Harwin, Norwich.  
Uhthoff, Edward, Stourbridge.  
Willoughby, James Lees, Chilwood and Fleetwood-on-Wyre.  
Waller, William Henry, 16, Furnival's Inn, in the City of London; 9, Robert Street, Hampstead Road; and 18, Georgiana Street, Camden Town.  
Were, Samuel, late of Axminster; Torquay; 34, Southampton Square, Dorchester.  
Whiting, William, Clayton Place, Chalk Road, Islington; Greenwich; Monmouth.  
Willders, John Warin, Wakefield Street, Wigan; and Chesterton.  
Whatley, David, Cirencester.

## NOTES OF THE WEEK.

## ALTERATIONS IN THE GOVERNMENT SECURITY BILL.

SINCE our last number, the following alterations or amendments have been made in this bill:—

1st, Information of "the open and advised speaking" prohibited by the act, must be given upon oath before one or more justices of the peace within six days after such speaking, and a warrant for the apprehension of the person must be issued within ten days after lodging the information.

2nd. The operation of the clause is limited to two years.

3rd. No person can be convicted under this clause except on his own confession in open Court, or unless the words be proved by two credible witnesses.

4th. No costs incurred for the prosecution for any felony under the act are to be allowed.

## EASTER RECESS.

Parliament will sit this day to complete the Security of Government and Alien Bills, and the House of Commons will then adjourn to Monday week the 1st, and the Lords to Thursday the 4th May. We shall submit the Acts to our readers in an early number.

## RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Attorney-General v. Gains.* Jan. 13, 1848.

## CHARITY TENANTS.

*The Court, in letting the lands of a charity, is not justified in refusing a higher rent out of liberality to an old tenant, though it will make him reasonable compensation for any loss sustained by the termination of his tenancy.*

THIS was a petition for leave to except to the Master's report finding that it would be for the advantage of a charity at Loughborough to adopt a negotiation entered into by the trustees for letting certain lands, amounting to 52 acres, belonging to the charity, to a Mr. Packe, who was a perfectly responsible tenant, for 220*l.* per annum. It appeared that the lands in question had long been occupied by a Mr. Lacy, as tenant from year to year, at the rent of 119*l.* per annum. He was represented as having considerably improved their value, which the Master originally found to be now 148*l.* per annum, a rent which Mr. Lacy consented to give. Subsequently, Mr. Packe offering a larger sum, Mr. Lacy increased his offer to 188*l.* per annum, but as he was desirous of making a reasonable profit out of the lands, he could not compete with Mr. Packe, whose object in getting the land was of another kind. It was urged in opposition to the Master's finding, that a liberal landlord would not turn out a good tenant from a farm which he had long held, and for which he was willing to give a fall rent, merely because he might obtain a higher offer; and that the Court ought to act towards its tenants upon the principles which would guide a liberal landlord; and that, at all events, Mr. Lacy would be entitled to compensation for a part of his outlay,

which would diminish the advantage to be derived from Mr. Packe's offer.

Mr. Twiss and Mr. Blunt for the application. Mr. Wilcock in support of the report.

Lord Langdale said, that it required something very strong to show that the charity ought not to get the benefit of the highest rent. The Court could not be as generous and liberal as an individual might be. It might be hard to deprive Mr. Lacy of the possession of the land, but he could not on that account deprive Mr. Packe of his legal right to outbid him. He thought the report ought to be confirmed, and a reference made to the Master to inquire whether Mr. Lacy was entitled to any and what compensation; with liberty to review his report, if the amount of the compensation should more than counterbalance the excess of Mr. Packe's offer.

## Vice-Chancellor of England.

*Ex parte Gotobed.* March 3, 1848.

CONFIRMATION OF MASTER'S REPORT.—  
COSTS.—122ND ORDER OF MAY, 1845.

*A mere suggestion by counsel that a petition is impertinent by reason of its length is not a sufficient ground for the court to proceed under the 122nd Order of May, 1845, to make the petitioner pay the costs occasioned by the unnecessary or improper parts of the petition.*

IN this case certain lands had been purchased by a railway company, the purchase-money had been paid into court, and the Master was directed to inquire and report whether the purchase was a proper one: by his report he found that it was; and another petition was presented praying the confirmation of the Master's

report, and payment of the costs of the petition by the railway company.

Mr. Heathfield appeared on the latter petition for the railway company, and objected that the Master's report was set out at too great a length in the petition, and contended that the petitioner ought to pay the extra costs of the length of the petition occasioned by the so setting out the Master's report, urging the Court at the same time to exercise the power conferred upon it by the 122nd Order of May, 1845, and direct the Taxing Master to ascertain the costs so occasioned, and make such order for the payment of the same as was just.

Mr. Gaselee appeared for the petitioner.

The Vice-Chancellor said, a reference was directed to the Master to report on this purchase, and he made his report. On such a reference no persons were allowed to attend except those interested in the purchase; the railway company, however, had not attended, and they had therefore no knowledge of what had been done on such reference, except by service of the petition after the report had been made. The petition merely stated the order of reference and the report, and then asked that the purchase might be carried into effect. Mr. Heathfield had suggested that the petition was of too great a length, and therefore impertinent, and had urged him to act under the 122nd Order of May, 1845. This was the first time he had ever been called on to act upon that order, and he was of opinion that he ought not to make any order as to the impertinence. On the coming on of the petition he had not been favoured with any discussion of the point, but on the contrary, there had been merely a general suggestion that because the petition had set forth the facts too fully, that therefore some part must be impertinent, and forthwith he was to proceed under the 122nd Order of May, 1845. That appeared to him not a proper mode of acting on the order. A judge should not, without hearing counsel, say what was right or what was wrong, and more especially in the present case where the railway company could not know what the Master's report was, it was proper to state the report on the petition, and although he must say that some of the words might have been struck out, yet it did not differ from the report as made by the Master, and he was of opinion that as he had had no discussion on the subject, the proper course for him to adopt would be not to interfere at present; he should therefore make the order for the confirmation of the report as prayed, as a matter of course.

Vice-Chancellor Knight Bruce.

*Barker v. The North Staffordshire Railway Company.* Nov. 18, 1847, and Feb. 9, 1848.

THE LANDS CLAUSES CONSOLIDATION ACT.  
8 VICT. c. 18, ss. 18 & 85.

A railway company giving notice of its intention to take lands under the 18th section, cannot enter upon part and give security

for that part only under the 85th section, but must deposit the price or give security for the whole before such entry.

The bond must be given with two sureties, notwithstanding that the company is incorporated.

The company must clearly and satisfactorily show that they have complied with the requisitions and fulfilled the conditions of the 85th section, before they can enforce it against a landed proprietor.

THIS was an injunction bill filed by the lessee of certain salt works at Sandbach, in Cheshire, against the company to restrain them from entering on any part of the portions which they had given notice of their intention to take for the purposes of their line of railway, until they had deposited the value of, or given security for, the price of the whole. It appeared that the company not requiring all the land which they had given notice to take for their immediate purposes, had given security by bond under their common seal, they being incorporated, for the value of so much as they did immediately require, but there were not two sureties to the bond.

Mr. Russell and Mr. W. T. S. Daniel moved for the injunction, insisting that the company had no right to enter upon any part of the land which they had given notice of their intention to take, without depositing its value or giving security for the whole. They also contended that the bond ought to have been given with two sureties.

Mr. Malins, for the company, opposed the motion, contending that by the 89th section of the act the company had authority to enter upon the land they may require for the purposes of their undertaking, and did not require them at once to enter on or give security for all they had given notice under the 18th section to take. Nor did the 84th or 85th sections make any difference. It is admitted that the company must take all the land of which they have given notice, but it does not therefore follow that they must deposit the value of acres, when perhaps they only want to enter upon a rood. The 68th section provides for the settlement of claims by arbitration or a jury, and it contains nothing in any way inconsistent with this. On these facts of the case counsel cited *Bridges v. The Wilts, Somerset, and Weymouth Railway Company*, 11 Jurist, 315; and *Stone v. The Commercial Railway Company*, 1 Rail. Cas. 375. With regard to the bond, it was argued that the 85th section, when it said that the promoters are "to give to such party a bond under the common seal of the promoters if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters, or any two of them with two sufficient sureties," meant that the sureties were to be found only in those cases where the promoters were not a corporation. A similar mode of construction had been put upon the Statute of Frauds, where deeds

directed to be signed and sealed were held, as to corporations, to be necessary only to be sealed.

His Honour said, that his impression upon both points was with the landowner. He should grant the injunction, with liberty upon 24 hours notice to move to dissolve it.

Feb. 9, 1848.—The defect in the bond having been cured, the company had had the value of the land for which they had given notice in due course, according to the act, and having paid into court the amount assessed, viz. 53*l*. moved to dissolve the injunction. The sum demanded by the plaintiff was 4,600*l*. and upwards, he contending that his property would be ruined by part of the salt-works being severed from the remainder. On the other hand, the evidence of the defendants, went to show that the part of the works taken could at small expense be reinstated on some other part of the property.

*Malins*, in support of the motion to dissolve the injunction.

*W. T. S. Daniel* opposed it, objecting that the value could not be relied on as a just computation, having regard to the severance of the brine pits from the remainder of the salt works. The valuation thereof was wrong, for although the party appointed was directed to value the estate and interest of the plaintiff, yet he had in the body of the valuation set a price upon the land itself. The plaintiff was willing and was able to sell the whole of his manufactory, and the defendants were bound to take all under the 92nd section.

*Malins*, in reply, said, that the point of severance amounted to nothing, for it was quite easy for the plaintiff to dig his brine pits upon some other part of his land at a small expense; and as to the valuation, no evidence was before the court to impugn it. The company had fulfilled the requisitions and performed the conditions of the 85th section of the act, and were entitled to have the injunction dissolved.

His Honour said:—This application to dissolve the injunction is grounded altogether upon matter which has arisen subsequently to the time of granting it, and the question argued now has been whether the defendants have fulfilled the conditions and complied with the requisitions of the 85th section of the act called the Lands Clauses Consolidation Act, 1845, so as to entitle them under that section to enter upon and use the lands in question. Now as to this, I think generally, if not universally, and in the present instance certainly, it is incumbent upon those who seek to avail themselves of the section against a landed proprietor to show satisfactorily and clearly that they have fulfilled its conditions and complied with its requisitions. If there is room for doubt, the landed proprietors must, I conceive, have the benefit of the doubt. Viewing the case in this way, I cannot represent myself as satisfied that the defendants have fulfilled these conditions or complied with those requisitions. I am not satisfied that I ought, from the ma-

terials before me, to infer that in fixing a sum of 53*l*. the valuer had regard to the provisions or the principles of the 63rd section. I further may observe that the subject of valuation seems to me to differ from the subject that he is alleged to have been appointed to value—a remark which I make independently of the observation that the language of the valuation may be thought not sufficiently to identify the subject to which it related, or the authority, nomination, or appointment under which he was acting. Moreover, I think it right to state, that I doubt very much whether, if the defendants were to be assumed to be right in this matter as to everything but the bond, that instrument is so worded or so expressed as to be conformable to the statute. Upon the whole, considering what is the nature of the 85th section, and what are the rights and duties of the parties before me, independently of it;—considering also that the defendants put their case for dissolving the injunction solely and merely upon that section, and their alleged compliance with its terms, I must I think say, they have not shown grounds upon which they seek to be relieved from the injunction. I refuse to do so, reserving the costs. I may add that I have not omitted to observe the 91st and 92nd sections, although in what I have hitherto said I have treated the case as not affected by the 92nd section, which, however, may possibly be thought relevant. I am not sure that the defendants are not seeking to take part only of a manufactory, the parties being able and willing to sell the whole. One of the meanings of the word “manufactory” may be, a place where manufactures are carried on. I doubt whether the parcels which the company seek to take are not parcels of the plaintiff's salt manufactory.

Injunction continued.—Costs reserved.

### Queen's Bench.

(Before the Four Judges.)

*Wright v. Rice.* Easter Term, 1848.

#### PROHIBITION. — REPLEVIN. — COUNTY COURTS ACT.

*In actions of replevin the jurisdiction of the County Courts Act, 9 & 10 Vict. c. 95, extends to cases where rent to a greater amount than 20*l*. is claimed, with power under section 121, for either party, where the claim is for more than 20*l*., to remove the cause into a superior court.*

In this case Mr. Archbold applied for a writ of prohibition in order to prohibit the trial of an action of replevin in one of the County Courts established under the 9 & 10 Vict. c. 95, in which the damages were laid at 200*l*., and the amount of rent claimed was 75*l*. He contended that the jurisdiction of the Court was limited by section 58 to cases where the debt or damage claimed is not more than 20*l*. [*Nightman, J.* Before this late act passed, the sheriff in his County Court might in replevin,



by plaint hold plex to any amount, though above 40s., by virtue of the Statute of Marlbridge.] The jurisdiction under the new County Courts Act is limited and restricted to a certain amount.

Lord Denman, C.J. The statute 9 & 10 Vict. c. 95, by section 121, enacts, that in an action of replevin either party, where the rent or damage in respect of which the distress shall have been taken amounts to more than 20*l.*, may, under certain conditions, remove the action into any court competent to try the same in such manner as hath been accustomed. The effect of the act I take to be, that when the rent or damage claimed is more than 20*l.*, that either party may remove the case out of the County Court, but that does not affect the jurisdiction of the Court, but leaves it as it was before.

Mr. Justice Patteson. The jurisdiction of the County Court is not affected, but remains as it was under the Statute of Marlbridge. The Court, therefore, has jurisdiction over the cause, and that is the only question to which a writ of prohibition applies.

Mr. Justice Wightman. It is clear the sheriff in his County Court had jurisdiction in replevin to any amount before the late act passed, and that act does not appear to me to restrict the jurisdiction.

Mr. Justice Erle concurred.

Rule refused.

#### Common Pleas.

*Chaddock v. Wilbraham and another.* Hilary Term, 1848.

FALSE IMPRISONMENT.—ACTION AGAINST MAGISTRATES.—INVALID CONVICTION UNDER 9 GEO. 4, c. 31, s. 27.

*Where the conviction of the plaintiff for an assault before two justices under the 9 Geo. 4, c. 31, s. 27, directed that the fine imposed by such justices should be paid by the plaintiff to the Treasurer of the County, and in default of payment, that the plaintiff should be imprisoned for two calendar months, &c.: Held, bad, and that the said justices were liable to an action of trespass for false imprisonment at the suit of the plaintiff who had been arrested under the conviction.*

THIS was an action of trespass against the defendants as justices of the peace for the county of Chester, for the alleged false imprisonment of the plaintiff. The defendants pleaded not guilty by statute. At the trial before Coltman, J., at the last Spring Assizes at Chester, it appeared that the plaintiff having been convicted by the defendants of an assault under the statute 9 Geo. 4, c. 31, s. 27, and ordered to pay 5*l.* for such assault, together with the costs, was for default in payment of that sum arrested. The warrant of commitment under which the arrest was made, after reciting the offence for which the plaintiff was convicted, and that for the said offence he had

been adjudged to forfeit and pay the sum of 3*l.*, and 2*l.* for costs, on or before the 25th of November then next ensuing, and for default that he should be imprisoned for two calendar months, then went on further to state,—“And whereas we the said justices (the defendants) did then and there further order that the said sum of 3*l.* should be paid to the Treasurer of the said county of Chester in which the said offence was committed, to be by him applied according to the directions of the statute in such case made and provided; and that the aforesaid sum of 2*l.* for costs should be paid to the said M. G. And whereas the said Thomas Chaddock hath not paid the said sums of 3*l.* and 2*l.*, or either of them, pursuant to the above-mentioned adjudication, but herein hath made default. These are therefore to command you the said constables to apprehend the said Thomas Chaddock, and him to convey to the said house of correction at Nether Knutsford aforesaid, and him to deliver to the keeper thereof together with this warrant. And we do hereby command you the said keeper of the said house of correction to receive the said Thomas Chaddock into your custody in the said house of correction, and him there safely keep for the space of two calendar months, unless the said sums shall be sooner paid; and for you so doing this shall be your sufficient warrant.” Given, &c.

Being arrested under this warrant, and whilst on his way to prison, the plaintiff, at his own request, was taken to the magistrates' clerks' office, and there paid the sum of 5*l.*, upon which he was immediately discharged. The learned judge at the trial (an objection to that effect having been taken) thought the warrant bad in not directing that the penalty imposed should be paid to the overseers of the place where the assault had been committed, instead of to the Treasurer of the county, and accordingly a verdict was entered for the plaintiff, damages 5*l.*, leave being reserved to the defendants to move to set that verdict aside and enter a verdict in their favour. Pursuant to that leave, a rule nisi was obtained in the following Term, against which

Couch now showed cause. The 27th section of the 9 Geo. 4, c. 31, enacts that the fine shall “be paid to some one of the overseers of the poor, or to some other officer of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such township, parish, or place shall be situate.” Now, under this enactment, the conviction in the present case is clearly bad. The person to whom it directs the fine to be paid has no authority to receive the amount, and it might happen that although the sum were actually paid to the overseers or other officer named in the act, still under the warrant of commitment the plaintiff would be imprisoned. The statute expressly provides for time to be given to the party to pay the penalty imposed, and it was clearly the intention of the legis-



lature that the proper person who was to receive the amount should be expressly named in the conviction. That such is the true construction of the statute is rendered still more evident by the form given in the 36th section.

A great hardship might be inflicted on the party convicted were he in each case obliged to go to the Treasurer of the county and pay him the amount of the fine. The act having specially named certain persons to whom the fine is to be paid, and the conviction having directed payment to another and different officer, the plaintiff in the present instance has been imprisoned for disobedience to an informal conviction, and therefore, it is submitted, entitled to maintain his verdict.

*Welsby, Townsend, and Egerton*, in support of the rule. By directing that the penalty when paid should be transferred to the county rate, the section in question must be taken to authorize a direct payment to the Treasurer, who is the person intrusted with the management of the county rate, and all that the present conviction does is to dispense with payment to the person, who by the act is merely to be an intermediate agent. It would have been enough, had the warrant in the present case merely said, that the penalty was to be distributed as the law directs, and if so, then the conviction may be read just as if it had not named the particular person to whom the fine was to be paid. [*Maule, J.* That might be, but when the conviction does express a person, can it be allowed to speak amiss.] All that the conviction means is a payment in the proper course to the Treasurer. In actual practice, the fine is never paid to the overseer. By the 35th section of the statute of question, the conviction is to be in the form therein given, or "to the same effect," and here it is submitted the form used is to the same effect. Again, the misstatement or omission here is not in a material part of the conviction, and therefore, does not invalidate it. *Massey v. Johnson*, 12 East, 67; *Smith v. Sibson*, 1 Wills. 153; *Rex v. Jeffries*, 4 T. R. 767; *Barnes v. White and another*, 1 Com. Bench, 192. This is a mere matter of form, and it is sufficient if the form given by the act be followed out in substance, besides which, there is a saving clause in the 36th section, which covers the present defect, *Daniell v. Phillips and another*, 1 Cr. M. & R. 662; *In re Borthroyd*, 15 M. & W. 1. On the whole it is submitted, that the conviction is good, and that the plaintiff has been legally arrested.

*Coltman, J.* The directions in the conviction as to the payment of the fine imposed by the magistrates, renders it clearly invalid, and the magistrate therefore liable to the present action. Mr. Couch has forcibly shown, that it is important the person convicted should know to whom he is to pay the money during the time given for that purpose. In the conviction now before us, by a slip on the part of the magistrates, the person to whom payment is directed to be made is not one of the per-

sons expressly named in the statute. By ordering, therefore, the present plaintiff to be imprisoned for default in nonpayment to the Treasurer of the county of Chester, the magistrates make the plaintiff liable to an imprisonment not warranted by that statute, and for not paying to a person who is not authorized to receive the amount from him. The rule to set aside the verdict found for the plaintiff must be discharged.

*Maule, J.* By the provisions of the statute in question, the person to whom payment is to be made must be expressly named in the conviction, to enable the party convicted to discharge himself to that person during the time allowed by the statute for payment. In the present case the payment is directed to be paid to an officer not referred to in the 27th section, and when the 35th section and the form therein given are looked at, it is quite clear, I think, that the legislature never intended the payment to be made to the Treasurer of the county. The blanks which appear in the form, both before and after the word "of," when referring to the person to whom payment is to be made, favour that construction. This, although a mere slip on the part of the magistrates, the plaintiff had a right to take advantage of, and, having done so, I think the present rule must be discharged.

*Cresswell, J.*, and *Williams, J.*, concurred.  
Rule discharged.

### Bankruptcy.

*Wooller v. Jewisson.* April 11, 1848.

TRADER DEBTOR'S SUMMONS.—NOTICE.—PRACTICE.

*The form of particulars of demand and notice under the 5 & 6 Vict. c. 122, as prescribed by the General Rules and Orders of Nov. 12, 1842, must be strictly complied with.*

*Where the particulars of demand and notice requiring payment was signed, "Octavius B. Wooller," the summoning creditor's name being Octavius Borrodaile Wooller, the summons was holden to be irregular, and dismissed with costs.*

RICHARD JEWISSON was served with particulars of demand and notice requiring payment, under the 5 & 6 Vict. c. 122, by a creditor named Octavius Borrodaile Wooller, who afterwards made and filed the usual affidavit, upon which a summons issued returnable this day before Mr. Commissioner *Hotbroyd*.

Mr. *Crouch*, (as solicitor on behalf of the debtor,) took a preliminary objection to the form of the notice requiring payment, which was signed by the creditor with his initial name instead of his christian and surname. The 20th of the General Rules and Orders, (Nov. 12, 1842,) as to the particulars of demand and notice, after providing for the case of a partnership, enacts, that "in cases where the debt demanded is claimed to be due to any one person, or to two or more persons not being partners,

*Wilde, C. J.*, was sitting at Nisi Prius.

such particulars of demand and notice shall be signed by, or in the name of, every such person by his christian and surname," &c., and the form is given thus:—"Edward Jones, residing at," &c. In the present case the prescribed form was not followed. The creditor described himself as "Octavius B. Wooller," whilst it appeared from his own affidavit, that his name was "Octavius Borrodaile Wooller."

Mr. Commissioner *Holroyd*. It certainly does appear that the summoning creditor has not exactly followed the rule.

Mr. *Ryder*, as solicitor for the summoning creditor, contended, that the rule was sufficiently complied with. "Octavius" was the christian name, and "Wooller" the surname

of the summoning creditor. The second christian name was not contemplated by the rule, and the insertion of the initial could not mislead.

Mr. Commissioner *Holroyd*. The notice is not signed with the creditor's true christian and surname. It is a trifling objection, but if it be insisted upon, I feel myself bound to give it effect.

Mr. *Crouch* said, he must persist in his objection, and submitted, that according to the practice the summons must be dismissed with costs.

Mr. Commissioner *Holroyd*. That is the invariable rule.

Summons dismissed with costs.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Law of Arbitration.

The previous Sections of this Series of the Digest in the present volume will be found as follow:—

Registration of Voters' Appeals, pp. 15, 347.

Law of Attorneys, p. 42, 563.

Law of Railways, pp. 71, 178.

Costs, p. 197, 565.

#### Courts of Equity:

Law of Wills, p. 121.

Construction of Statutes, p. 149.

Principles of Equity, p. 222.

Pleading, p. 241.

Practice, p. 268.

Evidence, p. 299.

#### Courts of Common Law:

Construction of Statutes, p. 373.

Grounds of Actions and Principles, pp. 396, 415.

Pleading, p. 443.

Practice, p. 465.

Evidence, p. 487.

#### House of Lords:

Appeals, p. 507.

#### Criminal Law, p. 523.

#### Bankruptcy, p. 541.

### ARBITRATOR'S POWER.

See *Examining Parties*; *Reference back*.

#### AWARD.

1. *Rule of Court*.—A general demurrer to a bill to set aside the award, which was agreed to be made, but had not been made a rule of the Court of Chancery, overruled by the Vice-Chancellor, but allowed on appeal by the Lord Chancellor. *Heming v. Swinnerton*, 14 Sim. 589.

Cases cited in the judgment: *Lord Lonsdale v. Littledale*, 2 Ves. jun. 451; *Nichols v. Chalie*, 14 Ves. jun. 268.

See *Rule of Court*.

2. *Damages where payable*.—An award made on reference of an action of trespass, is not vitiated by the arbitrator directing damages to be paid at a certain place and time, but the payment may be rejected as surplusage. *Rees v. Waters*, 4 D. & L. 567.

3. *Matters in difference*.—If upon a reference of "all matters in difference," the parties omit to call the attention of the arbitrator to a matter not necessarily before him, they cannot object to the award, on the ground that he has not adjudicated upon it.

Upon a reference of "all matters in difference" between the plaintiff of the one part, and the defendants of the other part; *quære*, if the arbitrator must award in respect of matters in difference between him, and any one or other of them. *Rees v. Waters*, 4 D. & L. 567.

Cases cited in the judgment: *Winter v. White*, 1 B. & B. 350; *St. Moore*, 674; *Buspole's case*, 8 Rep. 98, h.

4. *When sufficiently certain*.—An action, together with all matters in difference, was referred to arbitration. The arbitrators awarded generally, that a certain sum was due from the defendants to the plaintiffs. The Court discharged a rule calling on the defendants to show cause why they should not pay to the plaintiffs the sum so awarded. *Rule v. Bryde*, 1 Exch. Rep. 151.

5. *Witness, examination of, when not sworn*.—The Court refused to set aside an award on the ground that the witnesses had been examined without being sworn, it appearing that the party objecting had called witnesses in support of his case, and examined them also not upon oath. *Allen v. Francis*, 4 D. & L. 607, n.

See *Finality of Award*; *Setting Aside*; *Sufficient Finding*.

### EXAMINING PARTIES.

*Arbitrator's power*.—*Breach of Faith*.—Where the clause in an order of reference, em-

powering the arbitrator to examine the parties to the action, had by agreement been struck out, it appearing that the defendant would not otherwise have consented to the reference, and at the meeting before the arbitrator, the plaintiff, notwithstanding, tendered himself as a witness in his own behalf, and was received by the arbitrator, (who thought he had a power independent of any such clause): *Held*, that such a proceeding on the part of the plaintiff was a breach of good faith, and that the award must therefore be set aside.

*Held*, also, that the defendant had not waived the objection by cross-examining the plaintiff under protest, and offering evidence in support of his defence.

*Quere*, if an arbitrator has any power, independent of a clause in the order of reference to that effect, to examine the parties to the action? *Smith v. Sparrow*, 4 D. & L. 604.

Case cited in the judgment: *Warne v. Bryant*, 3 B. & C. 590.

#### FINALITY OF AWARD.

An action of trespass brought in the Court of Exchequer by a plaintiff against three defendants, and all matters in difference between the said parties, were referred by order of Nisi Prius to an arbitrator, a verdict having been taken for the plaintiff; and by another like order, made at the same time, an action of replevin brought in the Court of Queen's Bench, by the same plaintiff, against one only of the defendants, was also referred to the same arbitrator. The main question agitated on both sides was, whether or not the plaintiff had, in 1842, become tenant to that party who was defendant in both actions. No other tenancy was ever set up, or brought into question before the arbitrator. The reference of the replevin suit was first proceeded in, and the evidence taken in it was, by consent, read over as evidence in the action of trespass. The arbitrator awarded in the action of replevin, that the plaintiff had good cause of action against the defendant, and was entitled to a verdict. In the action of trespass he awarded nothing as to the costs of the action of replevin, or whether at the date of the order of reference of either action, a tenancy of the plaintiff to the party, who was defendant in both actions, existed: *Held*, that the award was good, these matters, if in difference, not having been brought before the arbitrator at the hearing.

The arbitrator had the power of a judge at Nisi Prius. He did not award execution, but ordered the damages and costs to be paid at a stated time and place. That part of the award was held void *pro tanto* as surplusage.

The plaintiff had replevied in the County Court, but on the sale by the three defendants of the goods replevied, dropped that suit, and brought the action of trespass against them: *Held*, that as the proceeding in the County Court was not brought before the arbitrator, his award was good, though he had not awarded on it. Whether, on a reference of a cause and "all matters in difference between the said

parties," they being A., on the one part, and B., C., and D., on the other, an arbitrator must award on a cause and matter of difference pending between A. and B. only, *quere*. *Rees v. Waters*, 16 M. & W. 263.

Case cited in the judgment: *Winter v. White*, 2 Moore, 725; 1 Brod. & B. 330.

#### JUDGMENT NON OBSTANTE VEREDICTO.

An order of reference contained a clause restraining either party from bringing or prosecuting any action or suit in any Court concerning the premises referred: *Held*, that the finding of the arbitrator was conclusive, and that the plaintiff could not afterwards move for judgment *non obstante veredicto*. *Briff v. Pashley*, 1 Exch. Rep. 64.

Case cited in the judgment: *Steeple v. Bonsall*, 4 A. & E. 950.

#### PARTIES, EXAMINATION OF.

See *Examining Parties*.

#### REFERENCE BACK TO ARBITRATOR.

A cause, and all matters in difference between the parties, were referred to arbitration by order of Nisi Prius, which contained a clause enabling the Court, in case the award should be disputed, to remit the matters referred to the re-determination of the arbitrator. The arbitrators on each side, considering the award defective, agreed that it should be amended; and subsequently a judge's order was drawn up by consent, whereby it was ordered that the matters arbitrated upon should be referred back to the arbitrator, to make such alterations as he should think fit. The arbitrator altered the award, and re-delivered it, without giving notice to the parties of his intention so to do, and the amended award did not recite the judge's order: *Held*, that as neither party requested the arbitrator to hear fresh evidence, he was not bound to give them notice. Also, that such amended award need not recite the judge's order. *Baker v. Hunter*, 15 M. & W. 672.

#### RULE OF COURT.

*Order of reference*.—Where a rule *nisi* to set aside an award had been granted on the last day but one of Term, but was stayed in the office, because the agreement of reference had not been made a rule of Court, of which it appeared that the parties were aware at the time of making the motion; this Court refused in the following term, (the agreement of reference having in the meantime been made a rule of Court,) to antedate the latter rule as of the day when the motion to set aside the award was made, and to draw up the rule making the agreement of reference a rule of Court; although it appeared that the party moving had no copy of the agreement, which was in the hands of the opposite party, who had refused to make it a rule of Court in time. *In re Ross*, 4 D. & L. 648.

See *Award*, 1.

#### SETTING ASIDE AWARD.

Upon the face of an award the arbitrator ap-

peared to have improperly disallowed a sum of 818*l*. On an application to a Court of Equity to set aside the award, the respondent offered to allow it: *Held*, nevertheless, that the award must be set aside. *Skipworth v. Skipworth*, 9 Beav. 135.

## SUFFICIENT FINDING.

*Surplusage*.—After issue joined in an action of trover, on the pleas of not guilty, and not possessed, "all matters in difference in the cause between the parties," were referred by order of

reference to arbitration, "the costs of the cause to abide the event." The award directed, that "the said cause shall cease and be no further prosecuted, and that the said defendant," &c., "shall pay to the said plaintiff," &c., "on," &c., "the sum of 145*l*.: *Held*, on motion to set aside the award, that there was a sufficient finding on the issues, on which the costs might be taxed; and that that part of the award which directed a stay of proceedings might be treated as surplusage. *Hobson v. Stewart*, 4 D. & L. 589.

## BUSINESS OF THE COURTS:

## CHANCERY CAUSE LISTS.

## Master of the Rolls.

Easter Term, 1848.

## JUDGMENTS (reserved.)

Master *v.* Marquis de Croismare, fur. dirs. and costs.

Fisher *v.* Price, exons.

Smith *v.* Earl of Effingham, as to costs.

|   |                          |   |        |
|---|--------------------------|---|--------|
| { | Rice <i>v.</i> Gordon    | } | cause. |
|   | Same <i>v.</i> Scarnett  |   |        |
|   | Same <i>v.</i> Gordon    |   |        |
|   | Carter <i>v.</i> Gordon  |   |        |
| { | Same <i>v.</i> Ayers     | } | cause. |
|   | Peacock <i>v.</i> Peuson |   |        |
| { | Same <i>v.</i> Same      | } | cause. |
|   |                          |   |        |

## PLEAS AND DEMURRERS.

*Stand over*, { Dean of Ely *v.* Gayford, six pleas.  
Loat *v.* London and South Western  
Railway Company, dem.

## CAUSES.

*Part heard*, { Churchman *v.* Capon, fur. dirs. and  
3rd cause day } costs.  
Same *v.* Same, suppl.

To present petition, Stourton *v.* Jerningham.

First cause day after Term, Hooper *v.* Denoon.

S. O. to amend, Williamson *v.* Gordon.

M. T. { Murray *v.* Scarbrough } fur. dirs. and  
Same *v.* Crafter } costs.

*Part heard*, { Hemming *v.* Archer  
S. O. till petn. } Same *v.* Same.  
of rehearing } Same *v.* Same.  
disposed of } Raworth *v.* Same. } fur. dirs.  
and costs.

{ Knight *v.* Majoribanks }  
Same *v.* Same }  
Same *v.* Gibbs. }

Hooper *v.* Salmon.

Tugwell *v.* Hooper

Hilary Term, 1849, McMichael *v.* Kipling, exons. and petition.

First cause day, Philipe *v.* Watkins, pro confesso

*Part heard* { Hemming *v.* Archer  
Same *v.* Same }  
Same *v.* Same } Re-hearing.  
Same *v.* Same }  
Raworth *v.* Archer }

Wilson *v.* Eden, fur. dirs. & costs.

*Part heard*, 1st cause after Trinity Term, Petre *v.* Petre.

*Part heard*, Chancellor *v.* Morecraft.

*Part heard*, T. T., Gallafent *v.* Brown.

First cause day, Attorney-General *v.* Ward, exceptions, 2 sets.

First cause day, Attorney-Gen. *v.* Ward, fur. dirs. and costs.

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| { | Gas Light and                    | } | exons. & fur.<br>dirs. and costs. |
|   | Coke Com. <i>v.</i> Symonds      |   |                                   |
| { | Symonds <i>v.</i> Gas Light and  |   |                                   |
|   | Coke Com.                        |   |                                   |
| { | Stillman <i>v.</i> Gas Light and | } |                                   |
|   | Coke Com.                        |   |                                   |

*Part heard*, Attorney-Gen. *v.* Ainslie, re-hearing.

First cause day, Massey *v.* Carvick.

Trinity Term, Christy *v.* Courtenay.

{ Baynton *v.* Hooper. }  
Same *v.* Same. }

Lainson *v.* Lainson.

Knights *v.* Stanton, exons.

Wilson *v.* Eden, fur. dirs. and costs.

Weymouth *v.* Lambert, fur. dirs. and costs.

{ Benbow *v.* Davis. }  
Same *v.* Evison. }  
Bennett *v.* Cooper, fur. dirs. and costs.  
Biggs *v.* Naylor.

{ Winmill *v.* Winmill. }  
Same *v.* Munday. }

{ Same *v.* Winmill. }

Gibbins *v.* North Eastern Metropolitan Asylum, fur. dirs. and costs.

## NEW CAUSES. \*

{ Fox *v.* Roberts. }  
Same *v.* Same. }

{ Bentley *v.* Mackay. }  
Short, { Same *v.* Pagden. }  
Same *v.* Mackay. }

{ Greedy *v.* Lavender }  
Same *v.* Owen. } fur. dirs. and costs.  
Same *v.* Parrott }

Robinson *v.* Robinson, ditto.

Feistel *v.* King's College, ditto.

{ Carr *v.* Henderson } ditto.  
Same *v.* Thomas }

Short, Bromley *v.* Burrow.

Short, Muasters *v.* Wright.

Oliver *v.* Dunk.

Short, { Whittaker *v.* Whittaker } fur. dirs. and  
Same *v.* Gilbert } costs.

# The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 29, 1848.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HOMAT.

## LORD BROUGHAM'S BANKRUPTCY LAW AMENDMENT BILL.

If practice made men as perfect in the art of legislating as it is supposed to do in other arts, the Lord Brougham would be far and away the ablest legislator of the day, and the subject, beyond all others, on which he could not fail to pronounce with oracular profundity would be the Law and Practice in Bankruptcy. It would be a work of no inconsiderable magnitude to describe the various changes which this branch of the law has undergone, since it became the especial object of Lord Brougham's attention, and his lordship's indefatigable spirit would soon render the description imperfect, for “panting Time toils after him in vain,” and the rapidity with which the alterations are effected is quite as remarkable as their number. Courts are established and abolished, proceedings directed and prohibited, officers appointed and pensioned off, and the failure of one experiment seems a sufficient motive for trying another. The singularity is, that a large portion of the community—professional and general—look upon the proposed changes with as little of apprehension as of hope. The system is so unsatisfactory, that people despair of seeing it improved, and do not fear that any alteration can make it worse.

It is scarcely necessary to say, we do not participate in this feeling. The subject is too important, and materially affects interests too extensive, to be regarded with indifference. The discussion which the

question has undergone has cleared away many difficulties. The principles upon which the Law relating to Bankruptcy and Insolvency should be founded are no longer in dispute, and in a country where there is so much practical ability, it cannot be impossible to frame and adapt a system, bearing on the relation of debtor and creditor, which might be administered without producing universal disappointment. The principles on which the law is to be based, however, must be clearly expounded and steadily kept in view. The mischief of modern legislation on this subject is occasioned by the total disregard of principle and the attempt to patch up a structure defective in its foundation. Hence, in covering one blot half a dozen are exposed, and the edifice becomes every day worse adapted for the purposes of its erection.

The Bill now before us furnishes another instance, in addition to many which have preceded it, of the evil to which we have adverted, added to which it seeks to combine objects of a private and personal nature with others in which the public are interested. It is entitled “An Act for the regulation of the Court of Bankruptcy, and for the further amendment of the Laws relating to Bankrupts.” Two out of every three of the enacting clauses have reference to the abolition, reduction, appointment, duties, salaries, fees, compensation, and retiring annuities of officers, whilst the remaining clauses suggest certain alterations in the law and practice, of an isolated character, which do not appear to embody or advance any particular principle, but

which must nevertheless be regarded as involving serious changes, the effect of which can only be understood by those who are practically acquainted with the operation of the existing law. We proceed in the first instance to describe those provisions which are essentially of a public nature.

It is proposed by the first section, that each Commissioner authorised to act in the prosecution of any fiat, shall in future have the same power as the Vice-Chancellor in any matter in Bankruptcy now within the primary jurisdiction of the Vice-Chancellor, with an appeal, however, in every such case, to the Vice-Chancellor. The second section enacts, that the fiat, which is attended with so much expense and delay, should be dispensed with, and that the proceedings shall originate by petition, a provision which we have already advocated,\* and which would be an unquestionable improvement, if the expenses of the fiat were saved to the suitor. The 7th section, however, provides,—“That every petition presented to the Court of Bankruptcy shall be filed in the office of the Chief Registrar, and the same fee paid thereon as has heretofore been paid on the issuing of a fiat in Bankruptcy.”

Now we have always understood the fiat was complained of chiefly because it was made the pretence for extorting a fee of ten guineas from the suitor, and if the fee is still to be paid upon filing the petition, we cannot congratulate the public on having obtained any advantage more substantial than the abolition of a useless form.

The 3rd section enacts—

“That every petition against or by any trader shall be presented and prosecuted in the Court within the district of which such trader shall have resided for six calendar months next immediately preceding the time of filing such petition: Provided always, that the Vice-Chancellor shall have power, whenever he may deem it expedient, to direct any petition against any trader to be prosecuted in the Court of Bankruptcy or in any district Court of Bankruptcy, with or without reference to the district in which the trader shall have resided or carried on business: Provided also, that any petition against any company within the meaning of the statute (7 & 8 Vict. c. 111), shall be prosecuted in the Court of Bankruptcy, or in any district Court of Bankruptcy, as the Vice-Chancellor may be pleased to direct.”

The district in which a trader shall have carried on business for six months before his bankruptcy would appear to us to be

the proper district for prosecuting the petition, and not that in which a bankrupt may have resided; and if the clause were thus altered, it would prevent the expense and delay occasioned by an application to the Vice-Chancellor to direct the petition to be prosecuted where the creditors of the bankrupt reside, rather than in a district where the bankrupt may not have a single creditor.

By the 14th section another attempt has been made to abolish the Subdivision Courts, and vest in a single Commissioner the power heretofore vested in those courts. On a former occasion (*ante*, vol. 33, p. 434,) we ventured to doubt whether this proposal ought not to be regarded as a retrograde movement, rather than an amendment, inasmuch as the proceedings which occasionally come before the Subdivision Courts are those in which the public have the least ground for dissatisfaction.

The 15th section leaves a matter of considerable importance—the right of appeal upon the suspension or refusal of a certificate—at least, in uncertainty. It is as follows:—

“That every decision or order of any Commissioner as to the allowance, refusal, or suspension of any bankrupt's certificate shall finally determine the question of such certificate, unless an appeal to the Vice-Chancellor be lodged within 21 days from the date of such decision or order; and that such certificate, when signed by the Commissioner, shall require no confirmation.”

The confirmation of the certificate when no appeal has been lodged, is a formal proceeding productive of no benefit, and which may be advantageously dispensed with. But is the person who has framed this section aware, that as the law now stands, although there is an appeal to the Vice-Chancellor sitting in Bankruptcy, upon the “allowance” of a certificate, there is no appeal upon its “refusal or suspension?” Is it intended to confer upon a bankrupt the right of appeal by this enactment? If a change of this nature be contemplated, it surely ought to be effected by express words, and not left to mere doubtful implication. There seems no good reason in any event why the bankrupt and his creditors should not be placed upon an equal footing as regards the right of appeal upon the question of certificate; but if the power of imprisonment were conferred on the Commissioners, as proposed by the 34th section of the bill now before us, it would be monstrous to leave the imprisoned bankrupt

\* See Observations, *ante*, p. 530.

without appeal, and give that power to any vindictive creditor. The section last referred to introduces a principle of the utmost novelty and importance into the administration of the Bankrupt Laws, and requires more deliberate consideration than it is likely to receive at the hands of either branch of the legislature during the present session: we copy it without abridgement:—

“And whereas by virtue of an act passed in the reign of her present Majesty, intituled *An Act for the Amendment of the Law of Bankruptcy*, the last examination of any bankrupt may be adjourned *sine die*, and at the sitting appointed for the allowance of the certificate of any bankrupt, the Court, having regard to the conformity of the bankrupt to the laws relating to bankrupts, and to the conduct of the bankrupt as a trader before as well as after his bankruptcy, is to judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require: And whereas the powers vested in the Court as aforesaid are not sufficient for the prevention of frauds or misconduct by bankrupts as traders, and it is expedient to enlarge the powers of the Court for that purpose in manner herein-after mentioned; Be it enacted, That whenever the Court shall adjourn the last examination of any bankrupt *sine die*, or shall refuse or suspend the allowance of the certificate of any bankrupt for the nonconformity of the bankrupt to the laws relating to bankrupts, or for the wilful misconduct of the bankrupt as a trader either before or after his bankruptcy, it shall be lawful for the Court, at its discretion, at the same time to adjudge that such bankrupt shall be imprisoned for the term herein-after in that behalf mentioned; that is to say, in case of adjourning the last examination of such bankrupt *sine die*, or of refusing the allowance of the certificate of such bankrupt, for any term not exceeding , or in case of suspending the allowance of the certificate of such bankrupt, for any term not exceeding ; and whenever any such imprisonment shall be adjudged the Court shall, by warrant under the hand and seal of the Commissioner, and in the form marked (E.) in the Schedule to this act annexed, commit the bankrupt to such prison as the Court shall think fit, there to remain and undergo such sentence.”

Before so formidable a power is given to a single Commissioner, the whole subject to which it relates will require to be thoroughly sifted and discussed. The clause in its present shape, imposing no restriction on the Commissioner's discretion, and affording him no assistance in its exercise, is so decidedly objectionable, that we entertain no apprehension it will obtain the sanction

of either branch of the legislature. It may be readily conceded, however, that the proposition, as part of a comprehensive system, is not undeserving of more consideration than our space will at present permit us to bestow on it, and we shall take an early opportunity of recurring to this part of the subject. The remaining clauses of the bill provide for the abolition of the offices of Secretary of Bankrupts, Clerk of Enrolments, and two of the Town Commissioners, as soon as vacancies happen. It is proposed too, that the present Registrar (Serjeant Lawes) should retire and be succeeded by the senior Registrar in attendance on the Commissioners' Courts. Some regulations are also suggested with respect to the Official Assignees, as well as provisions for the performance of the duties of the abolished offices. In these details so small a proportion of our readers can be supposed to be interested that we pass them over without further observation, and conclude for the present by referring to a proposition which has our unqualified approval, and which we hope to find embodied in any act professing to amend the Bankrupt Laws. It is contained in the 26th section, and is as follows:—

“And be it enacted, That from and after the passing of this act no fee shall be taken or charged by any officer of the Court of Bankruptcy or district Court of Bankruptcy for the swearing of any affidavit in any matter in bankruptcy, for any certificate of any bankrupt's conformity, for the allowance of any bond with sureties, or for any order made by any Commissioner in any of the said Courts.”

## CONSTRUCTION OF THE STAMP LAWS.

THE distinctive stamps applicable to informal instruments, framed in the hurry of business, by persons wholly unacquainted with the provisions of the Stamp Laws, frequently impose a considerable difficulty upon those who are called upon to advise as to the appropriate denomination of stamp required in any particular case. Some light is thrown upon this question by the judgment of the Court of Exchequer in a case very recently reported.<sup>b</sup> The facts were follow:—

In 1839, Barbara Taylor lent A. N. Steele a sum of money which there was reason to believe amounted to between 150*l.* and 180*l.*, and, in 1841, Steele handed to

<sup>b</sup> *Taylor v. Steel*, 665.

Taylor an unstamped document in the following form :—

“*Berwick, 16th March, 1841.*

“£170.

“Received from Mrs. Barbara Taylor, 170*l.* for value received, for which I promise to pay her at the rate of 5*l.* per cent. from the above date.

A. N. STEELE.”

In an action brought by the administrator of Barbara Taylor against A. N. Steele, for money lent, the above document was tendered on the part of the plaintiff, and objected to by the defendant as inadmissible for want of a stamp. The point afterwards came before the Court upon an application to enter a verdict for the defendant, if the instrument was improperly received in evidence.

On the part of the defendant it was contended, that the document was either a receipt, a promissory note, or an agreement of the value of 20*l.*, and in any case ought to be stamped. It was suggested, however, that the document was a promissory note, and that no particular form of words was necessary to constitute that instrument. *Green v. Davies,*<sup>c</sup> *Ellis v. Mason,*<sup>d</sup> *Shrivell v. Payne.*<sup>e</sup>

The Court, however, was unanimously of opinion that the instrument in question was neither a receipt, a promissory note, nor an agreement of the value of 20*l.* It was an acknowledgment requiring no stamp. Baron Parke's judgment gives the grounds of the decision of the Court in a clear and satisfactory manner. He said,—“This document is not a receipt, because it was not given at the time the money was lent. It is not a promissory note because it contains no promise to pay the principal, but only the interest. Besides, a promissory note cannot be made for payment of an indefinite sum. I agree that an actual promise is not necessary, if there are words in the instrument from which a promise to pay can be collected. Then, as to its being an agreement, it is not of the value of 20*l.* According to the more recent decisions, it must appear on the face of the instrument, or with reference to the subject-matter, be capable of being ascertained, that the agreement was of the value of 20*l.* at the time it was entered into.” Applying that rule to the present case, it is impossible to say that this instrument was an agreement of the value of 20*l.* at the time it was signed, for

the instrument might never have amounted to 20*l.* It is clearly an acknowledgment in writing of a pre-existing debt, and an agreement to pay interest on it, from which we may infer a promise sufficient to take the case out of the statute.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### CROWN AND GOVERNMENT SECURITY.

11 VICT., c. 12.

An Act for the better Security of the Crown and Government of the United Kingdom. [22 April, 1848.]

1. 36 G. 3, c. 7 ; 57 G. 3, c. 6. *After passing of this act, provisions of 36 G. 3, c. 7, and 57 G. 3, c. 6, repealed, except as to offences against the person of the Sovereign.*—Whereas by an act of the parliament of Great Britain passed in the 36 G. 3, c. 7, intituled “An Act for the Safety and Preservation of His Majesty's Person and Government against treasonable and seditious Practices and Attempts, it was among other things enacted, that if any person, or persons whatsoever, after the day of the passing of that act, during the natural life of his said Majesty, and until the end of the next session of parliament after the demise of the Crown, should, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of his said Majesty, his heirs or successors, or to deprive or depose him or them from the style, honour, or kingly name of the Imperial Crown of this realm, or of any other of his said Majesty's dominions or countries, or to levy war against his said Majesty, his heirs and successors, within this realm, in order by force or constraint to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both houses or either house of parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other of his said Majesty's dominions or countries under the obedience of his said Majesty, his heirs and successors, and such compassings, imaginations, inventions, devices or intentions, or any of them, should express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law, then every such person or persons so as aforesaid offending should be deemed, declared and adjudged to be a traitor and traitors, and should suffer pains of death, and also lose and forfeit as in cases of high treason: And whereas by an act of parliament passed in the 57 Geo. 3, c. 6, intituled “An Act to make perpetual certain

<sup>c</sup> 4 B. & C. 235. <sup>d</sup> 7 Dowl. P. C. 598.

<sup>e</sup> 8 Dowl. P. C. 441.



Parts of an Act of the 36 G. 3, for the Safety and Preservation of His Majesty's Person and Government against treasonable and seditious Practices and Attempts, and for the Safety and Preservation of the Person of His Royal Highness the Prince Regent against treasonable Practices and Attempts," all the herein-before recited provisions of the said act of the 36 G. 3, c. 7, which relates to the heirs and successors of his said Majesty, the Sovereigns of these realms, were made perpetual: And whereas doubts are entertained whether the provisions so made perpetual were by the last-recited act extended to Ireland: And whereas it is expedient to repeal all such of the provisions made perpetual by the last-recited act as do not relate to offences against the person of the Sovereign, and to enact other provisions instead thereof applicable to all parts of the United Kingdom, and to extend to Ireland such of the provisions of the said acts as are not hereby repealed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act the provisions of the said act 36 G. 3, c. 7, made perpetual by the act of the 57 G. 3, and all the provisions of the last-mentioned act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising or intending death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the heirs and successors of his said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices or intentions, or any of them, shall be and the same are hereby repealed.

2. *So much of 36 G. 3, c. 7, made perpetual by 57 G. 3, c. 6, as is not repealed, extended to Ireland.*—That such of the said recited provisions made perpetual by the said act of the 57 G. 3, c. 6, as are not hereby repealed, shall extend to and be in force in that part of the United Kingdom called Ireland.

3. *Offences declared felonies by this act to be punishable by transportation or imprisonment.*—That if any person whatsoever after the passing of this act shall, within the United Kingdom or without, compass, imagine, invent, devise or intend to deprive or depose our most gracious Lady the Queen, her heirs or successors, from the style, honour or royal name of the Imperial Crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both houses or either house of Parliament, or to move or stir any foreigner or stranger with force to invade the

United Kingdom, or any other her Majesty's dominions or countries under the obedience of her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct.

4. *Time within which prosecution shall be commenced, warrant issued, &c.*—That no person shall be prosecuted for any felony by virtue of this act in respect of such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking only, unless information of such compassings, imaginations, inventions, devices, and intentions, and of the words by which the same were expressed, uttered, or declared, shall be given upon oath to one or more justice or justices of the peace, or to any sheriff or steward, or sheriff-substitute or steward-substitute in Scotland, within six days after such words shall have been spoken, and unless a warrant for the apprehension of the person by whom such words shall have been spoken shall be issued within 10 days next after such information shall have been given as aforesaid, and unless such warrant shall be issued within two years next after the passing of this act; and that no person shall be convicted of any such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open or advised speaking as aforesaid, except upon his own confession in open court, or unless the words so spoken shall be proved by two credible witnesses.

5. *In indictments more than one overt act may be charged.*—That it shall be lawful, in any indictment for any felony under this act, to charge against the offender any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, shall have been expressed, uttered, or declared.

6. *Nothing herein to affect provisions of 25 Edw. 3, c. 2.*—That nothing herein contained shall lessen the force of or in any manner affect anything enacted by the statute passed in the 25 Edw. 3, c. 2, "A Declaration which Offences shall be adjudged Treason."

7. *Indictments for felony under this act valid, though the facts may amount to treason.*—That if the facts or matters alleged in an indictment for any felony under this act shall amount in law to treason, such indictment shall not by reason thereof be deemed void, erroneous, or defective; and if the facts or matters proved on the trial of any person indicted for any felony under this act, shall amount in law

to treason, such person shall not by reason thereof be entitled to be acquitted of such felony; but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

8. *As to the punishment of accessaries before and after the fact.*—That in the case of every felony punishable under this act, every principal in the second degree, and accessary before the fact, shall be punishable in the same manner as the principal in the first degree, is by this act punishable; and every accessary after the fact to any such felony shall on conviction be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

9. *Felonies under this act in Scotland not bailable, except as provided by 5 & 6 W. 4, c. 73.—Trial to take place in terms of act of Scottish parliament of 1701.*—That no person committed for trial in Scotland for any offence under this act shall be entitled to insist on liberation on bail, unless with consent of the public prosecutor, or by warrant of the High Court or Circuit Court of Justiciary, in such and the like manner and to the same effect as is provided by an act passed in the session of parliament holden in the 5 & 6 Geo. 4, intituled “An Act to provide that Persons accused of Forgery in Scotland shall not be entitled to Bail, unless in certain Cases;” but the trial of any person so committed, and whether liberated on bail or not, shall in all cases be proceeded with and brought to a conclusion under the like certification and conditions as if intimation to fix a Diet for trial had been made to the public prosecutor in terms of an act passed in the Scottish parliament in the year 1701, intituled “An Act for preventing wrongous Imprisonment, and against undue Delays in Trials.”

10. *No costs allowed in prosecutions under this act.*—That it shall not be lawful for any Court before which any person shall be prosecuted or tried for any felony under this act to order payment to the prosecutor or the witnesses of any costs which shall be incurred in preferring or prosecuting any such indictment.

## NOTICES OF NEW BOOKS.

*On the Means of Facilitating the Transfer of Land.* In Three Lectures. By JAMES STEWART, of Lincoln's Inn, Barrister. London: Longman & Co. 1848. Pp. 121.

WE feel bound to call the attention of our readers to these lectures, and to state the principal points contained therein. We were the first to announce the commission issued “for inquiring whether the Burdens on Land can be diminished by the establishment of an effective system for the *Registration of Deeds* and the *Simplification of the Forms of Conveyance.*” The Commis-

sion appeared in the *Gazette* of 19 Feb., 1847, and the Commissioners have proceeded on “the noiseless tenor of their way” for upwards of 14 months. Composed, as it is, of an eminent equity judge, of three learned conveyancing counsel, and two solicitors of the greatest experience, we doubt not that their inquiries have been, and will be, carefully conducted, and that there is an anxious desire to arrive at as correct a conclusion as the difficult nature of the case will allow.

In the meantime the Law Amendment Society has given much attention to the subject; several of its members, we understand, have been examined before the Commissioners, and the learned Treasurer of the Society, Mr. James Stewart, has delivered Three Lectures on the Means of facilitating the Transfer of Land.

The first treats of the dangers and difficulties now attending the practice relating to the transfer of land. In the second, the examination of the abstract of title system is considered, and a plan proposed for superseding it. In the third, the learned author discusses other measures which should accompany a register.

In the first lecture Mr. Stewart dwells on the enormous expense and the uncertainty of the investigation of titles on each occasion of transfer, and points out the several sources of danger,—1st, from accident,—2nd, from mistake,—and 3rd, from fraud.

The remedy proposed for the evils are—  
1. The establishment—not as formerly of a Metropolitan, but—of a *District Registry*, accompanied by a *Map*.  
2. The *Insurance of Titles*.

“I propose” says Mr. Stewart, (page 48,) “the establishment of a register of all the lands in this country, which is to be divided into districts for this purpose, of a smaller or greater extent as may be thought most advisable. My own idea is, that these districts should follow pretty much the boundaries of the districts of the County Courts, and that the officers of these courts, as well as the present registrars of births, should to some extent, be available for carrying on the functions of the register. I would establish a register in each of these districts, but I do not propose that it should be compulsory on any owner of property to register his land until some transaction respecting it took place. I would accompany the establishment of the register by the taking of an accurate map of the whole lands in every district, which should be identified in all its particulars by numbers, but which, as to boundaries or ownership, should not be evidence until acted on, and when acted on, be only evidence against the person who so acted on it, but not as against any one else. This

\* See vol. 33 pp. 315, 391.

map, on which I do not now dwell,<sup>b</sup> would take time to complete, but I do not propose to wait for its completion before establishing the register, which might commence immediately, with the existing description of the lands, and such identification of the parcels as could be obtained, which might be rendered complete when the map was finished. In this way, and by degrees, the lands in each district would gradually get on the register; and I think it would be only reasonable to allow persons to place their lands, after such public notice, on the register, if they thought proper, although no dealing took place. I propose that a certain effect should, after such public notice, attend the undisputed placing and continuance on the register for a certain number of years. We have seen that the present law makes 40 years, and, in some cases even 20 years, adverse possession, a title against all the world. As placing a title on the register, with such a notice, would be a more public act than any deed can now be, I think it would be reasonable to attach to it a more stringent operation; and I should say that a person having registered his land for 20 years should hold it against all the world, giving 10 years more for persons labouring under disability to make their claim. After 30 years remaining on the register, a complete title would thus be acquired. But supposing a person had some claim to this land, I would allow him to enter this also by way of caveat. This person need not further prosecute his claim unless he wished, but no dealings with that land so claimed should take place until that caveat had been removed. But then I would protect the true owner, by imposing penalties in proportion to the value of the land, on any vexatious or frivolous claim."

On the question of the *publicity* of the entries on a register, which has always formed a very material objection to the project, Mr. Stewart says:—

"There is a celebrated declaration, made by the most eminent bankers and merchants of London, to be found in the Appendix to the Second Report of the Real Property Commissioners, in favour of the utmost publicity, and declaring their opinion that it would be of the greatest benefit. It is also found to work no inconvenience in the many countries where a register prevails, open to the inspection of any one for a small sum of money; and in England it exists as to personal estate, for every one, for a shilling, may inspect any will that he pleases at Doctors' Commons. Still, if this be thought an insuperable objection to a register, it might be guarded against by having the land vested in a legal owner, and a simple reference to the mortgage or settlement containing these provisions which it was thought advisable to conceal. But this is matter of detail.

<sup>b</sup> "There is a useful Report as to a General Map printed among the Papers of the Society from the Amendment of the Law."

"Now, by this plan of a register which I propose, slowly and gradually, or, if the parties please, as quickly as they choose, all the lands of this country would get on the register, which would ever afterwards be evidence of the title, and would, in no distant period of time, give the owner a complete title against all the world." Pp. 52, 53.

We shall next extract the learned lecturer's views with respect to to the practicability of effecting *Insurances of Title*.

"I have heard it stated, by experienced professional men, that for 99 good titles there is one bad. And as to this, I find a very important passage in Sir Edward Sugden's book on Vendors, who says in the last edition 'that the present expense as to titles is, in 49 cases out of 50, superfluous; but as every one may be in danger, all are guarded against it. The precaution has very much increased within the last 20 years, but not from any increased danger.'<sup>d</sup> Well, then, according to this last very high authority, one title in 50 only is bad. Now if this be so—and I believe there can be no doubt that a larger proportion than 49 in 50 are good—does not the principle of insurance apply? This principle, which is constantly receiving extension, and with great benefit, is founded on the fact, that in a certain number of lives a certain number of deaths only will take place within a given time; or that in a certain number of houses only a certain number will be destroyed by fire; or that in a certain number of ships only a certain number will be lost; and on these calculations some of the most profitable, easily conducted, and wealthy companies and businesses in the world have been established. Now, let us see whether it be not possible to extend the principle to the insurance of titles. Each of these different kinds of insurance had its battle to fight at the commencement, and do not let us reject this extension of the principle without careful inquiry. I wish in the whole of the procedure that I propose, as much as possible to abide by the present practice of conveyancing, and to act according to existing rules. I will assume, then, that one of our large insurance offices, in whose means and stability the public would have perfect confidence (and no other could do it at all), was willing to undertake assurances of this nature. Let us see what would be done. One source of the profits of these companies, as we all know, is lending out their money on mortgage. They have, therefore, a machinery for examining titles; that is, they take care to employ an able and experienced solicitor and conveyancer. Now, it is on the opinion of both these gentlemen that the company lend their money—they have no other safeguard. They advance their own money on the sole faith of this opinion; and sometimes very large sums indeed, on one title, 100,000*l.*, 200,000*l.*, and even in a late

<sup>d</sup> Ed. 11, p. 986.

case that came to my knowledge, 400,000*l.* on the title of one person. Now, if they would lend their own money on such a security, it is most obvious that they could guarantee the payment of another person's money on a similar certificate by the professional adviser that the title was a good one. If they lent their money on a title that turned out bad, they would assuredly lose it; and if it was another person's money they could be no worse off, and might possibly be better. All those titles, then, that are good, are susceptible of being insured, with only a sufficient protection, by way of premium (to be paid as I shall hereafter explain), against some one title in 50, or, as I think, a larger proportion, which might, in spite of every care, turn out bad alike under the present law as under the new system. So far, you will see that we have adhered to the existing practice; and there is no shock done to any favour, or, if you please, prejudice towards existing habits. But see what an advantage is gained. The person whose title has thus been approved goes with it to the register. The title is thus insured for what the land will fetch in the market. No further examination of title is necessary: it is an insured title down to the 1st January, 1848; and were a register in existence, it is a registered title ever afterwards. If it remains a sufficient time on the register, it becomes a title against all the world, and the insurance is at an end; if, on the other hand, the purchaser has got the unlucky fiftieth title, the black sheep, and he is turned out, at all events he gets back the money that he paid."

It is obvious on this statement that the evil to be guarded against so seldom occurs, that insurances, unless the premium were of comparatively trifling amount, would not be resorted to; but then Mr. Stewart proceeds to titles of a more questionable kind:

"We have so far supposed that the title was of that class on which insurance societies lend their money,—that is to say, marketable titles. Let us suppose that the title, when examined, turned out not a marketable title, but only what is called a *good holding title*. Might it be also insured? Undoubtedly, because if the purchaser, although he had not what is technically called a marketable title, was not evicted, the company would be quite safe, although here, perhaps, a higher premium might be required. Here, then, are two classes of titles, under which the great bulk of the present titles may be ranged,—marketable titles and holding titles, and for this purpose you would thus get rid of the absurd distinction. What is to be done with a third-class title more or less defective? What is done now when there is a willing purchaser? An indemnity is given against the defect according to the nature of the defect. A bond or covenant, or charge on other land, or deposit of money. Thus the defective title is now cured. Cannot a company, acting in discharge of its proper duty, take an indemnity as well as an individual? I have

thus provided for all these three usual classes of titles. And what is to be done with positively bad titles—can they be insured? Why, no; no more than the life of a man in a galloping consumption. They ought not to be transferred, and, as to them, the holder has no title, and ought not to be protected. But all technical blots—all that class of objections which are called 'conveyancer's crotchets,' and most of those objections which private acts of parliament are obtained to cure, could be insured against with perfect safety: there would be an end to them for ever. If this were done, do you not see what a mass of technical objections which now effectually prevents the transfer of land, would be got rid of? An insured title down to a certain period, and a registered title ever afterwards, would give you indeed free trade in land, if this is what is desired, and would, at all events, allow the real owner to do what he wanted with it."

Mr. Stewart thus concludes his second lecture by referring to the probable effect of his plan upon the interests of lawyers. He says:—

"I wish it to be understood, that in proposing this great change, I do not hold out any hope of dispensing with the use of the lawyer in dealings with land. When the interest of the profession clashes with that of the public, it is the duty of the former to give way; but here I believe they do not clash; and it is as much the interest of the profession as of the public to promote the ready transfer of real property. I find this expressed on all sides by members of the profession, and more especially by solicitors, from many of whom I have received great assistance. I find in those countries in which registries are established on the principle for which I contend, that the professional classes who assist in dealings with land, are rich, powerful, and respected. Without legal assistance I do not believe that dealings in land can be safely conducted. I have no intention, because I think I have no power, of dispensing with this assistance. But I conceive that the charges may be made more moderate in each particular case, and better defined and regulated according to the amount of property. And believing, as I do, that if you establish a register on this plan there would be twenty dealings where there is now one, I am satisfied that the last person who would complain of this alteration would be the lawyer. It is not his real interest, be assured, to support a system which scares the great majority of the public from having anything to do with the purchase of land."

Here we must for the present leave the subject. We invite the remarks of our correspondents, and shall take an early opportunity of discussing the propositions.

## ANNUAL CERTIFICATE DUTY.

## REPEAL OF CERTIFICATE DUTY.

DURING the parliamentary recess at Easter, there is but little to say regarding the abolition of the Certificate Tax.

By the way, the lawyers have much reason to regret the change in the Terms, which has deprived them of a few days' rest between Christmas and the long Vacation.

The government, since the first application for the repeal of the Certificate Duty, having given up the intended increase of the Income Tax,—and looking at the present state of public affairs, and the deficiency in the revenue,—it appears to be the very general wish of the profession not unduly to press the matter in this session; at all events, not beyond a candid recognition of the claim to relief, when a revision of the Stamp Act or Taxation generally takes place, as seems most.

## PROPOSED TAX ON THE MEDICAL PROFESSION.

The state of the public revenue at the present time, and the discussion of the grounds on which the certificate duty on attorneys is maintained, have given rise to various speculations. Amongst others, Mr. John Herberton Burn, has submitted a project to the Chancellor of the Exchequer for raising nearly three millions by a loan secured on a tax to be levied on the medical profession. The members of the legal profession have, we believe, paid about nine millions in hard cash since the personal taxes were imposed on them, but we have no wish to see the burthen extended to any other profession. Mr. Burn's plan, however, will serve to show the injustice and inequality of the present impost, and so far the discussion may be useful. We give it in his own words:—

The duties imposed upon practising solicitors and attorneys, and other legal members to whom the Acts imposing them apply, produce an increasing income of more than 100,000*l.* a year.

This imposition arose, and was founded on the principle of adding to the respectability of the legal profession, and keeping out unworthy persons who had before crept into it. The care thus extended over property and civil rights—might well upon the same ground of propriety and expediency, be extended to the medical profession of surgeons, and apothecaries, and chemists, and on the like principle herein of better securing the health of the community, as the other had reference to its property.

This measure would give increased respectability to the medical practitioner, and keep out improper parties from any interference therein. If the property of the country was deemed, as it certainly was, a fit subject for such protection, surely the health of it, is at least of equal, if not of more importance. The ignorance or mistakes of the legal classes are capable of being rectified, not so always those of the medical practitioner. Supposing then that the same duties were imposed on medical practitioners in as nearly the same degree as the different professions will admit of, we should have an income of not less than 115,000*l.* a year thence arising. Of this income, say that 100,000*l.* should be set apart for an interest of 3½ per cent. on a loan to be borrowed upon it, this would support more than 2,800,000. If the money could be raised for less interest, then of course a larger amount would be at the disposal of Government.

As to the propriety and practicability of the measure there seems to be no cause for doubt, and of the official means to effect it the same mode, *mutatis mutandis*, that has been taken with regard to the legal practitioner, appears to be the best. But what is to be done with the surplus of 15,000*l.* a year, or more? This ought, in the first place, to supply the expenses of all official appointments and outgoings.

They could not reach 5,000*l.* a-year, and, therefore, leave the remainder, not less than 10,000*l.* a year, to be annually applied in the re-purchase of the stock created by the loan, so as in effect, within less than forty years, to wholly extinguish the burthen.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE annual meeting of the 19th inst. was, for the most part, limited to the routine affairs and business of the Association. The elaborate Report, of which time only permitted the principal parts to be read, will soon be printed, and we shall have an opportunity of laying it before our readers. Several parts of it were in effect the same as we have already published during the past year;<sup>a</sup> but a considerable portion, setting forth the labours of the committee, is new and highly important, particularly in regard to the proposed improvements in the practice and course of proceeding in the courts both of equity and common law, and in the future measures to be adopted for carrying the objects of the Association into effect.

Various topics of inquiry have also been prepared regarding the office and *status* of attorneys, which will shortly be circulated amongst the profession, and which we shall take an early opportunity of considering.

<sup>a</sup> See 34 L. O. 41; and pp. 211, 406, *ante*.

A prominent point in these inquiries relates to the exclusion from the Inns of Court of attorneys and solicitors, and the impolicy, as well as the injustice, of depriving them of offices of distinction which they formerly possessed, and for discharging the duties of which they are peculiarly qualified.

It will be our business to enter upon the discussion of these topics, and to assist in collecting and diffusing a knowledge of every subject bearing on the interests of attorneys and solicitors.

It was announced in the third address of the committee, issued in February last, (p. 406, *ante*.) that the services of the Honorary Secretary would cease at the annual meeting, on account of his various duties at the Incorporated Law Society. The Committee are authorised to elect another Secretary, and in order to procure the most efficient person for the office, they have invited applications by public advertisement. This is the only change in the management of the Association. All the members of the Metropolitan Committee have been re-elected, and we observe that they are all members of the Incorporated Society, and several of them are members of the Council.

We must lose no occasion of repeating that the great good which is contemplated by the promoters of this Association depends mainly on the extent of the support which it may receive from the *country members* of the profession. It is of the utmost importance that the numbers in all the principal districts should be extended as much as possible.

#### LECTURES AT THE INCORPORATED LAW SOCIETY.

THE Lectures which we some time ago announced on the moral, social, and professional duties of attorneys and solicitors, will be delivered in the Hall of the Society, in Trinity Term next, on Monday, 29th May, Friday, 2nd, Monday, 5th, and Friday, 9th June, at Eight o'clock precisely, by Samuel Warren, Esq., of the Inner Temple, Barrister-at-Law, F.R.S.

In these Lectures, it is intended to take a comprehensive practical view of the moral, social, and professional duties of Attorneys and Solicitors.

It is of great importance to society to secure adequate moral and intellectual qualification and efficiency in a body of men whose services are indispensable to all classes, from the highest to the lowest—who are linked with them in the most delicate, critical, and intimate relations, affecting, according to circumstances, the life, character, honour, liberty, or property of each member of the community.

It is feared that this great department of the Profession is too often entered, and occupied, without adequate reflection upon the arduous responsibilities which it entails on its members, and upon their fitness to sustain them.

These topics it will be endeavoured to enforce and illustrate by appeals to professional experience, and the ordinary course of the events and transactions of society.

Members of the Society are entitled to attend these Lectures, and the Subscribers to the Lectures on Equity, Common Law, or Conveyancing will be admitted gratuitously, upon the production of a ticket, which may be obtained of the Secretary.

#### EASTER TERM EXAMINATION.

WE observe that a mistake still prevails amongst the collectors of intelligence for the newspapers, with regard to the number of persons admitted each Term on the Roll of Attorneys. The number for the present Term is stated to be about 200, but the real number will be little more than one-half.

The printed list comprises 199 names, but of these 52 were examined and passed last Term, and 9 in previous Terms. The total number entitled to be examined is 110; but only 112 left their testimonials in due time, and of this smaller number it seems probable that several, for one cause or other, will be absent.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From March 21st, to April 21st, 1848, both inclusive, with dates when gazetted.*

Brooke, William Herley, Dudley. March 24.

Bryant, Isaac, Wimbourne Minster. April 4.

Guppy, Alfred, Honiton. April 4.

Husband, Sydney Otway, Mold. April 18.

Sandford, Folliott, Shrewsbury. April 11.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From March 21st, to April 21st, 1848, both inclusive, with dates when gazetted.*

Amory, Samuel, Isaac Sewell, and Samuel Moores, 25, Throgmorton Street, Solicitors, Attorneys and Conveyancers. March 28.

Fox, John, and John Meek Britten, 1, Basinghall Street, City, Attorneys and Solicitors. March 21.

Leigh, John Shaw, and William Eaton, Liverpool, Attorneys and Solicitors. April 21.

Leigh, John Shaw, and George Whitley, Liverpool, Attorneys and Solicitors. April 21.

Matthews, John, and Edward Augustus Hilder, Gravesend, Attorneys and Solicitors. April 4.

Morris, William, and James Larder Bromfield, Chester, Solicitors. April 18.

Rogers, Thomas Stephens, and Jonathan Green, Kingston, Attorneys and Solicitors. April 11.

Smith, William Henry, and William Witham, 12, Bedford Row, Solicitors. March 28.

White, George, George Kewney, and Robert Azlack White, Grantham, Attorneys and Solicitors. April 11.

#### PERPETUAL COMMISSIONERS.

*Appointed under the Fines' and Recoveries' Act.*

Galloway, James Prescott, in and for the county of Lancaster. March 28.

Micklefield, Anthony Horrex Rosser, Stoke Ferry, in and for the county of Norfolk. March 31.

Newby, William Crawford, Stockton-upon-Tees, in and for the county of Durham and North Riding of the county of York. March 28.

#### PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

**Royal Assents.**—22nd April, 1848.

Crown and Government Security. See the Act, p. 600, *ante*. And Notes, p. 549, *ante*.

#### House of Lords.

Their Lordships will meet on Thursday, the 4th May.

See Lord Brougham's new Bill, p. 597, *ante*.

#### House of Commons.

The House will meet on Monday, the 1st May.

#### REPEAL OF CERTIFICATE DUTY.

Further petitions have been presented for the repeal of the tax by

The Earl of March  
Sir John Guest  
Captain Somerset

Captain Harris  
and  
Mr. Farnham

#### RECENT DECISIONS IN THE SUPERIOR COURTS,

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

*Tipping v. Coates.* April 15, 1848.

#### INSERTION OF NAME IN SUBPENA NOT RESEALED.

*Serving a subpoena without having it resealed after another name has been inserted, if not a contempt of Court, is a great abuse of its practice; and an order founded on proceedings connected with the service of such subpoena will be discharged with costs.*

Mr. Rolt, with whom was Mr. Elmsley, stated that this was an appeal from an order made by Vice-Chancellor Wigram. A commission having been issued for the examination of witnesses at Leominster, Mr. J. Baker was duly served with a summons and subpoena *duces tecum* to appear and answer certain interrogatories, and to produce certain documents. It being discovered during the examination that the principal document in respect of which the evidence of this witness was required was not included in that subpoena, he was, while under examination, served with another. The latter subpoena originally contained only the names of two persons, that of Mr. Baker having been subsequently interlined. This subpoena had not been resealed according to the present practice of the Court. The document was not produced, and the witness, in answer to an interrogatory respecting it, had replied that, although the Commissioner required him, he refused to produce it, as he considered it a private and confidential paper. After publication had passed, a motion was made by some of the defendants, for liberty to

file interrogatories for the examination of Baker, and his Honour had thereupon ordered that a new commission should issue, before which the witness should attend with the document, to be examined on the old interrogatories at his own expense, and that he should pay the costs of such commission and of that motion.

The learned counsel contended on two grounds that such order could not stand. In the first place, there was no precedent for the service of such subpoena as above-mentioned, and in the next that the Commissioner was not authorized to demand the document. On the latter point were cited *Bradshaw v. Bradshaw*, 1 Russ. & Myl. 358; and *Parkhurst v. Lowten*, 2 Swans. 194.

The *Solicitor-General*, (Mr. John Romilly,) and Mr. Speed, appeared in support of the order.

The Lord Chancellor, without hearing a reply, remarked that the witness did not appear to have been asked to answer the latter part of the interrogatory requiring him to set forth the document in the words and figures, or to the purport and effect. This might have been through neglect on the part of the Commissioner, and if so, the witness would not be in contempt for not doing all the interrogatory required. Why then should he pay the costs of a re-examination? He could not be punished for the error of the Commissioner, who had not properly put questions which he was commissioned to ask. As to the production of the document, the order clearly could not stand in its present state. It directed the party to produce a document mentioned in a thing called a subpoena, but which not having been



re-sealed according to the present General Orders, was not worth the parchment upon which it was written. Although the service of this so-called *subpœna* and the proceedings under it might not have been intended as a contempt of the Court, there certainly had been an abuse of its practice, which the Court would not only not recognise, but which it would quash together with all proceedings connected with it. As, therefore, it could not be said that a party was in contempt for not producing a document for which he had been served with no *subpœna*, and at which the interrogatory did not aim, the Vice-Chancellor's order must be discharged, with costs of the motion before his Honour.

### Rolls Court.

*MacHardy v. Hitchcock.* Jan. 20, 1848.

*In order to support a motion for the production of documents, the plaintiff must be able to produce a distinct admission of his title by the defendant against whom he moves. It is not sufficient to show that he does not deny the title.*

THIS was a motion for the production of papers in a suit by a party who claimed to be the sole next of kin of a Mrs. MacEwer, and as such entitled to a certain trust fund, which it was the object of the suit to administer.

The answer on which the motion was made stated, that the defendant did not believe that the plaintiff was the sole next of kin of Mrs. MacEwer, but who was or were the next of kin of Mrs. MacEwer, other than the plaintiff, he did not know; and the question was, whether this passage sufficiently admitted the plaintiff's title to support the motion. The documents in question were not alleged to show the plaintiff's title, but related to matters in question in the cause.

Mr. Kindersley, for the motion, contended that in order to negative the plaintiff's claim the answer must deny his title, and it was not sufficient for the defendant to say that he knew nothing about it: and that the passage above cited was an implied admission of the title.

Mr. Beavan, contra, cited *Dubless v. Flint*, 4 M. & C. 522; *Edwards v. Jones*, 13 Sim. 632; *Adams v. Fisher*, 2 Keen. 754, and 3 M. & C. 526.

Lord Langdale expressed his opinion that the plaintiff's title was not admitted with sufficient clearness upon the answer to give him a right to the production of the documents moved for. The bill stated that the plaintiff claimed to be entitled as sole next of kin, and set forth the reason of his claims. The answer, which must be assumed to be sufficient, said, that the defendant did not believe the plaintiff to be the sole next of kin, and added what would be very important, if it was a necessary inference from that passage that the plaintiff was one of the next of kin. But he did not think that such an inference was necessarily implied, and therefore must refuse the motion.

### Vice-Chancellor of England.

*Flint v. Warren.* Feb. 29, 1848.

### CONSTRUCTION OF WILL.—CONVERSION OF REAL ESTATE.—HEIR AT LAW.

*A testatrix devised to her executors and their heirs all lawful powers and authorities to manage and conduct her freehold estates in the event of her not otherwise giving and devising the same in any other manner or to any other person or persons, so as that the same and every part thereof might at their discretion be sold and converted into money, and the net money to form part of her personal estate: Held, that the proceeds of the real estate, when converted, belonged to the heir at law, no devise of the same being contained in the will.*

MARY BRADDON, by her will, dated the 6th of March, 1834, declared, that as to all her real and personal estate and effects whatever which it had or might please God to bestow upon her, she disposed thereof as thereafter mentioned, that is to say, in the event of her dying intestate, as to all or any part of her real estate, she declared that the same should not by descent go to her then heiress at law, Mary Decaufour, but that the persons or person next in succession should be thereto entitled in like manner as if Mary Decaufour had died in her lifetime, but she hoped no such intestacy would arise; and in the meantime she left and gave the directions in those her instructions thereafter contained. She then gave several legacies and annuities and made some charitable bequests, nominating Flint and Warren to be her executors, and she gave and devised to them and their heirs all lawful powers and authorities to conduct and manage her freehold messuages, lands, tenements, and hereditaments, in the event of her not otherwise giving and devising the same in any other manner or to any other person or persons, so as that the same and every part thereof might at their discretion be sold and converted into money, and the net money to form part of her personal estate; and for those and every other purpose connected with her property, whether real or personal, she invested them and the survivor of them and his heirs, executors, and administrators, with her full authority, and to prevent litigation and strife, she directed that any undisposed of surplus of monies should be paid as she should by any future writing or will direct, as it was her intention to do. In 1845, this will came before the Vice-Chancellor, and he decided that the real estate was converted out and out into money, and subjected with the personal estate to the payment of the debts and legacies. *Flint v. Warren*, 14 Sim. 554. The real estate having accordingly been converted, a question now arose whether the heir at law was entitled to the proceeds, or the next of kin, according to the Statute of Distributions.

Mr. Lewis, for the heir at law, argued that as there was no gift of the proceeds, when converted it was to be taken as real estate and



formed a resulting trust for the heir at law. *Collins v. Wakeman*, 2 Ves. 683.

Mr. Bethell and Mr. Chandless, contra, contended, that although such was the law, yet here the testatrix having directed the real estate to be sold, but not having expressed how the proceeds should be applied, clearly intended it to go as the law provided, namely, to the next of kin, for the words were very stringent:—"The net money to form part of her personal estate." That is to say, it was not to fall into her general personal estate as in the class of cases relied upon by the other side, but form a peculiar part of her personal estate. *Green v. Jackson*, 5 Russ. 35, and 2 Russ. & Myl. 238; *Phillips v. Phillips*, 1 Myl. & Keen, 649; *Amphlett v. Parke*, 2 Russ. & Myl. 221.

The Vice-Chancellor said, he had been thinking over the case, and it appeared to him that there were no words of gift to take the proceeds of the sale of the real estate away from the heir. He always understood it to be a settled rule of law that nothing was to be taken from the heir, except by way of gift, and he could not in the words of the will find anything in the way of an indication of intention to make such an exception, save the direction of the testatrix that the money should be part of her personal estate. It appeared to him that he was not at liberty to say that as the estate had been sold, the money arising from the sale did not belong to the heir. He was particularly struck with the case of *Amphlett v. Parke*, decided by Lord Brougham: there, as he collected it, although the parties were dissatisfied with the judgment, they never appealed, and on the construction of that case he was bound to say that the fund not having been given away, belonged to the heir and he felt that if he held otherwise, he should be doing violence to a settled principle of law.

Vice-Chancellor Knight Bruce.

*Attorney-General v. Gardner*. Dec. 16 & 17, 1847, and Jan 11, 1848.

CHARITY.—MORTMAIN ACT.

*Land was conveyed by deeds dated in 1838, to such uses as A. should appoint, and in default of appointment, to the use of A. in fee simple. By a deed dated in 1839, A. appointed the land to certain persons for charitable purposes. These deeds did not comply with the requirements of the statute 9 Geo. 2, c. 36. In 1846, all parties conveyed to trustees for the charitable purposes, and the conveyance was executed and enrolled pursuant to the statute: Held, that the prior deeds should have been so executed and enrolled.*

By indenture of lease and release, dated respectively the 1st and 2nd days of December, 1838, a piece of land near Conway Street, in Birkenhead, in Cheshire, was, in consideration of 250*l.*, paid by the said William Walker to A. A. Dobbs, conveyed by Dobbs and Duncan and others, (his mortgagees,) to William Walker and his heirs, to the use of such person or persons

and for such estate and interest as he should by any deed or instrument in writing, duly executed, from time to time direct, limit, or appoint, and in default of appointment, to the use of the said William Walker, his heirs and assigns. The execution of these deeds was not attested by two witnesses, and no enrolment in Chancery was made. By an indenture dated the 31st of May, 1839, the execution of which was not attested by two witnesses, but which was enrolled in the Court of Chancery, the said William Walker, for the purposes of erecting, preserving, and maintaining in all times coming suitable and convenient buildings in Birkenhead, for the public worship and service of Almighty God, and the reading and preaching of His most Holy Word according to the doctrine, forms, usages, and discipline of the Established Church of Scotland, and for the instruction and tuition of the young in Scriptural knowledge and useful learning, in pursuance of the power under the said indenture of release, appointed the said piece of land and all his interest therein, unto and to the use of the said J. Walker, J. Pollock, T. Boyd, G. Badenoch, P. Ross, William Walker, and J. Barban, as joint tenants, their heirs and assigns, upon certain trusts in accordance with the purposes mentioned in the recital; and it was provided that it should not be in anywise or at any time competent for the said trustees and elders, or any of them, either with or without the concurrence of the communicants, or any number of them, to alter, disannul, vary, or make void any of the provisos, stipulations, or declarations thereinbefore contained.

By a deed poll endorsed on the last-mentioned indenture, executed by the same parties, and dated the 11th of January, 1840, certain explanatory regulations were declared.

The church was completed in August, 1840, when John Gardner, then a duly qualified licentiate of the Established Church of Scotland, was appointed the minister. In the years 1843 and 1844, Mr. Gardner, J. Walker, J. Barban, and Richard Barban, and also Walter Walker and other members of the congregation of the said church at Birkenhead, joined the Free Church, and used the church at Birkenhead for the purposes of such Free Church. In consequence of proceedings taken against the said J. Gardner before the Presbytery of Glasgow, he was deprived of his licence and office of a minister of the Established Church of Scotland. The said John Pollock, one of the trustees, became bankrupt. By an indenture, dated the 23rd day of September, 1844, and made for the purpose of curing the supposed defects of the deeds of 1838 and 1839, by reason of the noncompliance with the provisions of the Mortmain Act, Dobbs and his assignees (he having become bankrupt) granted and conveyed the said piece of land and buildings to J. Walker, J. Barban, and Walter Walker, in fee; and ultimately, by an indenture dated the 5th of August, 1846, and made between the said William Walker of the

one part, and the said T. Boyd, G. Badenoch, P. Ross, and William Walker of the other part, after reciting the deeds of 1838, 1839, and 1840, before-mentioned, and that the 250*l.* mentioned in the deed of 1838 was part of a sum subscribed for establishing a church and school in connection with the Established Church of Scotland, and that questions had arisen as to the validity of the deeds of 1839 and 1840, by reason of which the trusts of the same were void, and that John Walker and J. Barban refused further to act in the execution of the trusts, it is witnessed that William Walker, in pursuance of the powers contained in the deed of 1838, appointed the land and buildings to the use of the said Boyd, Badenoch, Ross, and William Walker, as joint tenants, and their heirs and assigns for ever, but upon trust, when thereunto required by any decree of the Court of Chancery, to convey and assure the same to such persons as the Court should direct by any order made in the suit of *The Attorney-General v. Gardner*, (which was the original suit,) or in any supplemental suit; but nevertheless, for the same charitable trusts, intents, and purposes, &c., as were expressed in the deed of 1839, or as near thereto, &c., so as perpetually to maintain and establish the said church and school-house as a church or place of Divine worship and place of instruction, according to the provisions as in the deed of 1839 was particularly set forth concerning the same; and until any conveyance should be made under a decree, upon trust to stand seised of the same upon the trusts declared by the deeds of 1839 and 1840, in the same way as if the deed of 1839 had been duly attested and enrolled. This deed of 1846 was duly executed, attested by two witnesses, and enrolled in the Court of Chancery. The original bill and information was filed against Mr. Gardner, J. Walker, J. Barban, and others, praying, among other things, a declaration that the land and buildings were in equity subject to the charitable trusts, intents and purposes declared by the deeds of May, 1839, and January, 1840, so far as the same were capable of being carried into effect; that they ought to be perpetually preserved and maintained in as strict communion and connection with the Church of Scotland. The supplemental information was afterwards filed, alleging that the informants and plaintiffs were advised, that if for any cause or reason the appointment of 1839 was not valid and effectual in law for the purposes therein expressed, then that all the estate and interest in the premises, which before the execution thereof was vested in the plaintiffs, was duly appointed by the indenture of 1846 to the uses and for the purposes therein declared or referred to, and praying that the informants and plaintiffs might have the same benefit of the execution and enrolment of the indenture of 1846, in respect of all the relief prayed by the amended information and bill, as they would be entitled to if the same indenture had been duly executed and enrolled before the filing of the original information and bill, and

that, if necessary, the deed of 1846 might be established, and the trusts thereof performed and carried into execution under the authority of the Court.

Mr. Russell and Mr. Roundell Palmer, for the plaintiffs, cited *Doe v. Bingham*, 4 B. & Ald. 672; *Dunn v. Calcraft*, 2 S. & S. 56; *Humming v. Perrier*, Gilb. 95; and *The Attorney-General v. Day*, 1 Ves. sen., 218.

Mr. Rolt, Mr. Wigram, Mr. Bacon, Mr. Cowling, Mr. J. V. Prior, and Mr. Selwyn, for the several defendants.

*His Honour*, after disposing of an objection as to want of parties, proceeded,—“It seems proper to say at once whether I consider the disputed question of the validity, the legal and equitable validity, of the conveyance to the plaintiff William Walker, dated, though not executed, in 1838, as material. I say ‘legal and equitable validity,’ for the nature of the case strikes me to be such that this conveyance, if legally valid, ought to be taken as equitably valid, and if legally invalid, as equitably invalid. I certainly consider the question very material. The object of the suit I may, omitting incidental matter, describe as being to assert and establish a title to the absolute property in real estate, namely, in a parcel of land at Birkenhead, in Cheshire, forming the site of certain buildings erected in order to be used as a Presbyterian place of worship and as a Presbyterian school, which buildings are in fact used as a Presbyterian place of worship and as a Presbyterian school, but are used for those purposes upon a system and in a manner contended by the Attorney-General and the plaintiffs as varying from the intention for which the land and buildings were acquired and erected, and to be improper. Accordingly, the asserted title to the land is so asserted on the sole ground that the land and buildings were effectually subjected, and now stand subjected, to the trust which the defendants consider and describe as a charitable trust in favour of Presbyterian education and Presbyterian worship upon certain principles set forth on the record, and the suit seeks to vindicate and enforce that trust. The suit then, if the site of the building is bound by a charitable trust, may be successful; but if not, must, I suppose, fail, since, as I apprehend the matter, there is neither claim upon any other hypothesis. Now it is contended by some at least of the defendants, though admitting the buildings to be now used by them, or with their sanction or concurrence, as a Presbyterian place of worship and a Presbyterian school, that the property is not effectually devoted to any such object, and has never been effectually subjected to any charitable trust; the reason assigned being, as I understand the fact, a failure of compliance with the requisitions of the stat. 9 Geo. 2, called the Mortmain Act; and, as I understand the fact, it is true, that although the alleged charity originated, if at all, within the last 12 years, the only instrument concerning it, or the site or buildings in question, with regard to which there appears to have been, or ought I think to

be presumed or taken to have been, any accurate or effectual compliance with that statute, is the deed of 1846, a deed subsequent to the institution of the original suit, but made the subject of a supplemental information and bill; and it is asserted, correctly as it appears to me, by the opposing defendants, that the effectiveness of the deed of 1846, as an instrument imposing a charitable trust on the site and buildings, must depend entirely on the title of the plaintiff William Walker. So that if he had not then a title to the site and buildings, that deed cannot be taken to have imposed a charitable trust upon them; but William Walker's title to the site and buildings depending on the validity of the conveyance of 1838, if that conveyance be legally and equitably valid, which the opposing defendants deny, the land and buildings may, with the aid of the deed of 1846, be treated, I think, in the suit as effectually appropriated to the charity which is the subject of the suit. Whether a charity to be administered in the mode that the relators and plaintiffs think right, or in another mode, is, of course, a different question. The main question then being in my view, the legal validity of the deed of 1838, as I have said, I must own that, whether willingly or unwillingly, I have found myself unable to treat the case made against it as unworthy of a lawful technical consideration. My province being, not to make the law, but to administer the law as I find it, I have been obliged to view the point with a lawyer's eye, so far as my faculties enable me; and so viewing it, though I cannot declare myself satisfied of the validity of the instrument, I am not so clearly satisfied of the contrary as not to be justified in giving to the relators and plaintiffs an opportunity, if they wish it, of trying that question in an action under the direction of this Court. Unless they desire to do so, the information and bills must, I apprehend, be dismissed, but without prejudice to any future suit. I say an action advisedly, not an issue, unless both parties ask it, and not a case, unless both parties ask it.

Jan. 11th. Counsel for the plaintiffs declining to try an action, the informations and bills were dismissed as, above stated.

### Queen's Bench.

(Before the Four Judges.)

*Attwood v. Joliffe and another.* Hilary Vacation, Feb. 3, 1848.

#### TRESPASS—CONVICTION—FORCIBLE ENTRY AND DETAINER.

*In order to justify a conviction by justices under the statutes 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9, there must be proof before them, as well of an unlawful entry on the premises, as a forcible detainer.*

*Where a conviction stated that justices had convicted G. A. of forcible detainer upon their own view, and that afterwards a complaint was made to the same justices that*

*the said G. A. forcibly entered the premises, and that notice of such complaint was given to the said G. A., who received the said notice but said nothing, and then went on to allege that the justices received evidence on oath of the unlawful entry.*

*Held, that the conviction was bad for omitting to show that G. A. had been summoned to answer the charge of the unlawful entry, or that he had had any opportunity afforded him of defending himself against such charge.*

THIS was an action of trespass, and false imprisonment. Plea: Not guilty, by statute. The plaintiff was a labourer, and the defendants, justices of the peace for the county of Somerset. The case was tried before Wightman, J., at the Summer Assizes, (1844,) for the county of Somerset, when a verdict was found for the plaintiff, by consent, damages 10*l.*, subject to the opinion of this court, on a case. The plaintiff was arrested under the following warrant:

"To the keeper of her Majesty's gaol of Shepton-Mallet, &c. Whereas upon complaint made unto us by John Holdway, overseer of the poor of the parish of Hemmington, in the said county: we went to the dwelling-house belonging to the overseers of the said parish of Hemmington, aforesaid, in the said county, and there found George Attwood, late of Hemmington aforesaid, labourer, forcibly, and with strong hand and armed power holding the said house, against the peace of our said Lady the Queen, and against the form of the statute in such case made and provided. Therefore we send you by the bringers thereof, the body of the said George Attwood, convicted of the said forcible holding by our own view, testimony, and record, commanding you in Her said Majesty's name, to receive him into your said gaol, and there safely to keep him until he shall have paid the sum of 5*l.* of good and lawful money of Great Britain, to our said sovereign Lady the Queen, which we have set and imposed upon him for a fine and ransom for his said trespass, &c. Given, &c.

Signed, "THOS. R. JOLIFFE, (L.S.)  
"J. T. JOLIFFE, (L.S.)"

At the trial, the defendants put in and proved the record of a conviction duly signed by them; which, after stating that the plaintiff had been permitted to occupy a parish house, in the said parish of Hemmington, and had refused to quit and give up possession thereof; and the plaintiff having been summoned, and having appeared before the defendants, they directed the possession of the house to be given up to the parish officers of Hemmington. And the said parish officers having made further complaint before the defendants, that the plaintiff had forcibly entered the said house, the conviction went on to allege, "which complaint and prayer by us the aforesaid justices being heard, we, the said T. R. Joliffe and J. T. Joliffe, the justices aforesaid, did on the day and year last aforesaid, give notice to the said G. Attwood of the said complaint and prayer, and the

said G. Attwood on the same day and year aforesaid, received the said notice, but said nothing then or at any other time in bar or preclusion of us the said justices enforcing against him the provisions of the statute in such case made and provided." The conviction went on to allege that certain witnesses were examined, and that the defendants convicted the plaintiff of the forcible entry and detainer.

Several objections were taken to the conviction, but the one on which the argument proceeded was, that the plaintiff was not summoned to answer the complaint of the forcible entry and detainer. It was also objected to the warrant of commitment that it did not disclose any offence over which the magistrates had jurisdiction.

If the Court should be of opinion that the said conviction and warrant, or either of them, are not sufficient to justify the said imprisonment, then the verdict found for the plaintiff to stand; but if the Court should be of a different opinion, then a verdict for the defendant, or a non-suit to be entered, as the Court should direct.

*Kingleake*, Sergeant, with whom was Mr. *Butt*, for the plaintiff. One objection to the conviction is, that it does state that the plaintiff was summoned to answer the complaint of forcible entry and detainer. All that appears is that notice of the complaint was given to the plaintiff, that he received it, and said nothing. The allegation is consistent with the fact that the plaintiff only received a verbal intimation that the defendants would at some time proceed to hear the evidence as to the unlawful entry. The warrant of commitment fails to show the jurisdiction of the justices, and for any thing that appears, the plaintiff may have been in possession of his own house. Under the statutes 15 Rich. 2, c. 2, and 8 Hen. 6, c. 9, there must be a forcible detainer after an unlawful entry, in order to give the magistrates jurisdiction. *Rex v. Oukley*,<sup>a</sup> and *Rex v. Wilson*.<sup>b</sup>

Jurisdiction must appear on the face of a warrant of commitment, *Regina v. Chaney*,<sup>c</sup> and *Regina v. King*,<sup>d</sup> and where the commitment is defective in that respect, such defect cannot be supplied by reference to a good conviction. *Wickes v. Clutterbuck*.<sup>e</sup>

Mr. *Crowder*, (with whom was Mr. *Phinn*), for the defendants. If a warrant of commitment be sufficiently explanatory of the offence, then it may be supported by a good conviction. There is a substantial allegation in the words of the statute 8 Hen. 6, c. 9, that there was a forcible holding of the house against the peace, and against the statute. In *Rogers v. Jones*,<sup>f</sup> *Daniel v. Phillips*,<sup>g</sup> *Rex v. Taylor*,<sup>h</sup> and *Stamp v. Sweetland*,<sup>i</sup> the Court has refer-

red to a conviction in aid of a commitment. As to the want of summons, it is conceded that the conviction ought either to show that the plaintiff was summoned, or had otherwise an opportunity of defending himself. A good complaint is alleged, and the conviction then goes on to state, that notice was given to the plaintiff of the complaint as to the unlawful entry, therefore he had an opportunity of defending himself, but refused to avail himself of it.

Lord *Denman*, C. J. I think this objection to the want of summons must prevail, but I do not express any opinion on the other objections that have been taken. The observations made by *Best*, C. J., in *Wickes v. Clutterbuck*<sup>k</sup> upon the duties of magistrates, are exceedingly good, and ought to be well considered by all magistrates when they are about to commit a person for a violation of the law. I think it is not necessary to consider whether the warrant be good or bad, because I am clearly of opinion that the conviction cannot be supported according to the general rules of law repeatedly laid down, and particularly in this Court, by Lord *Kenyon*, in *Rex v. Benn and Church*,<sup>l</sup> and whenever the point has been considered in any court of justice, it has always been held, that where a person is to be charged with an offence and subjected to an imprisonment, the proceeding is bad unless he has had an opportunity of being heard. Here, not only was there no summons, but the plaintiff had no opportunity of being heard. The conviction, therefore, under the circumstances, cannot be supported, and the plaintiff is entitled to judgment.

Mr. Justice *Patteson*. It appears to me unnecessary to decide in this case whether the warrant of commitment is sufficient or not, by reason of the reference to it in the statute, because the conviction is substantially bad, and shows a material defect of justice, and the warrant of commitment alone cannot entitle the defendant to a verdict. The fact stated on the face of the conviction is, that there was a forcible holding. That alone does not constitute an offence under the statute; this we decided in *Rex v. Wilson*, but it is also necessary that it should be shown that there was an unlawful entry. The magistrates might have convicted the plaintiff of an unlawful entry and of a forcible detainer on view, for both might have taken place in their presence; but that is not pretended to have occurred here. The conviction states a forcible holding on their own view; but the fact of the unlawful entry, which did not take place in their presence, required to be proved *aliunde*. If so, the person accused ought to have had the opportunity of examining the witnesses called to prove that fact. This plaintiff had no such opportunity. If there had been a summons, he would have known that a complaint had been made, and he would have had an opportunity of hearing the witnesses. There was not even a notice that a complaint had been made, and that he

<sup>a</sup> 4 B. & Ad. 307.

<sup>b</sup> 3 Ad. & Ell. 817.

<sup>c</sup> 6 Dowl. 281.

<sup>d</sup> 1 Dowl. & L. 721.

<sup>e</sup> 2 Bing. 483.

<sup>f</sup> 3 B. & C. 409.

<sup>g</sup> 1 Cr. M. & R. 662.

<sup>h</sup> 6 Dowl. & R. 662.

<sup>i</sup> 8 Q. B. R. 13.

<sup>k</sup> 2 Bing. 483.

<sup>l</sup> 6 T. R. 198.

would have had an opportunity of being heard on some future day. All that is said is, that he had notice of the complaint, and that he held his tongue. There is nothing to show he had any opportunity of doing otherwise. At some time or other, it is not said when, two witnesses are said to have been examined by the magistrates as to the unlawful entry, but it is clear, as far as the conviction goes, that that was in the absence of the plaintiff. There is, therefore, a defect of justice apparent on the face of the conviction, and the plaintiff is therefore entitled to a verdict.

Mr. Justice *Wightman*. I am of the same opinion. It is unnecessary to inquire into the validity of the warrant of commitment when the conviction on which it is founded is clearly bad. Before the plaintiff could be convicted of this offence, it ought to have been proved, not only that he was guilty of a forcible holding, but of an unlawful entry. The magistrates do find, on their own view, that there was an unlawful holding, but they must be satisfied by evidence that the plaintiff was there unlawfully; that is not so stated at all. They may have seen it, but they did not say so. It only appears that the plaintiff had notice, but not that he was summoned to appear at any fixed time and place, when witnesses would be examined to prove the unlawful entry. On every principle of justice, therefore, there is a fatal defect apparent on the face of the conviction, and the plaintiff must have judgment.

Judgment for the plaintiff.

### Queen's Bench Practice Court.

(Before Mr. Justice *Wightman*.)

*McGregor v. Fiskin*. 20th April, 1848.

ARREST UNDER THE 1 & 2 VICT. c. 110, s. 3, HOW AFFECTED BY THE 2 & 3 VICT. c. 41.

*The defendant, who was a Scotch bankrupt, and had obtained from the Lord Ordinary a warrant of protection under the 2 & 3 Vict. c. 41, s. 17, which by section 18 protects him from arrest in any part of the Queen's dominions, except in meditatione fugae, was arrested in London by virtue of a judge's order made under the 1 & 2 Vict. c. 110, s. 3, upon an affidavit that he was about to leave England and go to Scotland: Held, on application for his discharge, that the words in meditatione fugae do not apply to a case where the defendant is about to return to Scotland, but to cases where he intends to escape from his creditors by leaving the dominions.*

THE defendant in this case was a Scotch bankrupt, and having obtained from the Lord Ordinary a warrant of protection under sections 17 and 18 of the 2 & 3 Vict. c. 41, ("An Act for regulating the Sequestration of the Estates of Bankrupts in Scotland,") he came to London, where he was arrested at the suit of

the present plaintiff upon a judge's order under the 1 & 2 Vict. c. 110, s. 3, upon the ground that he was about to leave England and go to Scotland. By the 18th section of the 2 & 3 Vict. c. 41, it is enacted that the warrant of protection shall protect the debtor from arrest in Great Britain and Ireland and her Majesty's other dominions, for civil debt contracted previous to the date of the sequestration, but such warrant shall not be of any avail against the execution of a warrant of arrest or imprisonment *in meditatione fugae*, &c.

*Montague Smith* now applied for a rule for the discharge of the defendant from the custody of the Sheriffs of London, on the ground that at the time of the arrest he was privileged by the foregoing warrant of protection. [*Wightman, J.* The ground for the defendant's arrest is, of course, that he was about to leave England, that he came therefore within the meaning of the words "*meditatione fugae*."] Yes, but those words have obviously reference only to the case of a bankrupt running away from his creditors, and not to a case like this, where he is actually going back to Scotland, where he will meet them. By this arrest, he is actually kept away from his creditors. The words of the statute privilege him in all parts of Great Britain. In *Jones v. Anstruther*, a debtor was discharged in a similar way on motion under this act.

*Willes* showed cause in the first instance. The words *meditatione fugae* have a general meaning, and apply to any case where the debtor is about to leave the country where he is staying at the time of his arrest. If this were not so, he might go over to Ireland and then start away for America, and so be entirely out of the reach of his creditors, or he might go to some of the colonies, and so defeat the rights of those to whom he is indebted. In a recent case at Chambers, Mr. Baron Parke refused under this act to discharge a debtor, though he had his warrant of protection.

*Montague Smith*, in reply, was stopped by *Wightman, J.*, who intimated that he would see Mr. Baron Parke, and learn from him the facts of the case mentioned, and his reasons for his decision. On his return, his lordship said, that Mr. Baron Parke's decision was founded upon this, that it was sworn that the defendant was about to leave England and go to Toronto, which was a case widely different from the present one, in which the defendant does not purpose going abroad, but in fact to return back to the very jurisdiction from which he received his protection. He thought that the words *in meditatione fugae* could not have been intended to apply to a case of a party being about to leave England for Scotland, but to some intention of escaping from the dominions of Great Britain. He therefore directed the rule to be absolute, the defendant undertaking to bring no action.

## Court of Common Pleas.

*Newton v. Lord Albert Conyngham.* Easter Term, 1848.

EXECUTION FOR COSTS ONLY.—WRIT OF ERROR UNDER 7 & 8 VIC. c. 96, s. 57.

*As to whether the stat. 7 & 8 Vict., cap. 96, sec. 57, operates to protect a plaintiff who had been nonsuited from being taken in execution under a ca. sa. for costs. Quære.*

*In such a case, however, the Court refused to treat as frivolous a writ of error founded on the award of a writ of ca. sa. in the record of judgment, and to allow the defendant to issue execution notwithstanding.*

THIS was an action against the defendant, as the member of a railway provisional committee, and the plaintiff having been non-suited at the trial, the usual record of judgment was drawn up, containing an award of a writ of *ca. sa.* to recover the defendant's costs in the action. Upon that record, the plaintiff brought a writ of error, alleging as a ground that no such writ of *ca. sa.* could be awarded, as the case came within the operation of the 7 & 8 Vict., cap. 96, s. 57, which provided "that no person shall be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts, &c., in any action for the recovery of any debt wherein the sum recovered shall not exceed the sum of £20, exclusive of the costs recovered by such judgment."

*Bramwell* now moved, on behalf of the defendant, for a rule *nisi* to issue execution, notwithstanding the writ of error, on the ground that the latter was frivolous. In this case, there had been no "sum recovered," and therefore it was clear the section in question did not apply. To hold otherwise would be a great hardship on the defendant, and looking at the intent and spirit of the act, and more particularly at the words as well of the 57th section as the two sections immediately following, it was evident that no real ground existed for the writ of error.

*Wilde, C. J.* My impression is, that some doubts have been entertained as to the construction of the section in question, and certain judges have so construed it, as to relieve plaintiffs from imprisonment for costs only. I cannot, therefore, say that this is not a fit question to be agitated by a writ of error, and in the absence of any special circumstances to warrant execution pending the writ of error, I think, without expressing any opinion upon the construction of the statute, we cannot treat this as a frivolous writ of error.

*Coltman, J., Cresswell, J., and Williams, J., concurred. Rule refused.*

## Exchequer.

*Williams v. Pigott.* April 19, 1848.

RAILWAY COMPANY.—LIABILITY OF PROVISIONAL AND MANAGING COMMITTEE-MAN TO SOLICITOR OF COMPANY.

*Where a person allows his name to be placed upon the provisional committee, and it is*

*also inserted in the list of the managing committee, of which he is subsequently aware, and to which he does not object; such managing committee being authorized to direct the affairs of the company, he will not, without interference on his part in the affairs of such company, be liable to the attorney for his costs in any proceedings adopted by him by order of such managing committee, no bill having been obtained, or deed signed. It is, however, a question for the consideration of the jury whether, from all the circumstances, the committee are authorized to pledge the defendant's credit.*

IN this case an action had been tried before Mr. Justice Patteson at Gloucester. It appeared at the trial that the plaintiff was attorney to the "Wolverhampton, Bridgnorth, and Ludlow Railway Company:" that at the first meeting of the company, on the 6th of November, 1845, the defendant, (Sir Robert Pigott,) being present, was appointed one of the committee; to this he made no objection; he, however, shortly afterwards left the room; subsequently, on the same day, the defendant not being then present, the committee of management was appointed, and the defendant being named as one of such committee. There was evidence that the defendant was aware he was elected upon such committee, that he never repudiated the connexion, and also that he never attended any of the meetings subsequently. That at the meeting on the 6th of November, a prospectus, which had been before then issued, was adopted by the company, in which prospectus it was declared, that until an act of parliament should be obtained, the *direction of the affairs* should be under the control of the committee of management. There was no doubt this was a *bond fide* scheme, but failed from want of money: great expenses were, however, incurred after the 6th of November, 1845, and much progress was made towards carrying out the scheme. It was for some of these expenses that this action was brought. The plaintiff attended at the meeting of the 6th of November, and it was not disputed that he was one of the solicitors to the company. The question at the trial turned solely upon the liability of the defendant. The learned judge, in summing up, said, the question was, whether the defendant was liable to the plaintiff for work done in this *bond fide* scheme; that merely being one of those connected in the appointment of the managing committee, would not, of itself, make him liable: there was no positive act done by the defendant; he merely did not interfere, he did not repudiate. The question then was, did he authorise others to pledge his credit?

The jury returned a verdict for the defendant. *Whateley*, on behalf of the plaintiff, moved for a new trial, on the ground of misdirection, and that the verdict was against evidence. It was contended at the trial, that although the defendant never did attend any of the meetings, he was, nevertheless, liable. [*Parke, B.*

Not so, for the parties did not stand in the relation of partners.] The jury found that the defendant was not a member of the managing committee; this was surely against the evidence. In *Wood v. Harding, Wilde, C. J.*, held, that where a defendant had attended a meeting of the provisional committee at which a committee of management was appointed, by whom orders for the insertion of advertisements were given to the plaintiff, such defendant was liable for the orders so given after such meeting. In order to make the defendant personally liable, it was not necessary that he should have attended any of the meetings; as one of the provisional committee, he appointed the managing committee, and thereby made himself liable for their acts. [Parke, B. It is a question of fact as to the conclusion which would be drawn by any reasonable person. *Reynell v. Lewis, Wyld v. Hopkins*, 15 M. & W. 517, and 10 Jur. 1097.] He submitted that the rule was correctly laid down in *Pitchford v. Davis*, 5 M. & W. 2. There Parke, B., says: "The secretary who gives the order to the tradesman is primarily liable; the directors also who give the order to the secretary may be liable. A third party may become liable if it can be shown that he has authorized the act of the directors in making the contract." The question which should have been submitted to the jury in this case was, whether the defendant had concurred in appointing the committee, and thereby constituted them his agents. [Parke, B. The appointment merely meant that the committee should regulate the concern, and not that they were to pledge the credit of the defendant.] But in the regulation of the concern, it became necessary that an attorney should be employed, and such employment necessarily involved an outlay to which the defendant was liable. [Parke, B. It very frequently is the case that the attorney makes no contract with any one, but looks for payment out of the deposits.] The judgment of Pollock, C. B., in *Burnett v. Lambert*, 15 M. & W. 489, was also cited.

Pollock, L. C. B. I say nothing about the case of *Wood v. Harding*, under the special circumstances of the case, it may be correct. In the present case, I think it was clearly a question for the jury, if there was any question at all, whether the defendant intended to pledge his credit.

Parke, B. I am of the same opinion. Had the defendant accepted the appointment upon the managing committee, he would only have been liable for what he did as one of such committee: we cannot draw the conclusion that one is agent for the other. Whether, under all the circumstances of this case, the defendant was bound by the acts of the managing committee was purely a question of fact for the decision of the jury, and I think it was correctly left to them.

Rolfe, B., and Platt, B., concurred.

Rule refused.

*Billing v. Hitchings.* April 15, 1848.

TRIAL BY RECORD—VARIANCE—AMENDMENT.

*In debt on a judgment, the declaration correctly stated the principal debt recovered, but varied in the amount of damages and costs; the sum stated in the declaration being less than that upon the record. The Court gave judgment for the defendant, refusing to amend at the trial.*

*An application to amend under such circumstances must be by a separate motion.*

Petersdorff moved for judgment in a plea of *nul tiel* record. It was an action upon a judgment. The declaration stated the amount recovered as 19*l.* 9*s.*, and also 33*l.* damages; together 52*l.* 9*s.* The record produced in evidence showed a judgment for 19*l.* 9*s.*; costs, 40*s.*; damages, 1*s.*; and 33*l.* 19*s.* increased costs; together, 55*l.* 9*s.*

Simon submitted that there was a variance between the record produced in evidence and the declaration, and that the defendant was therefore entitled to judgment. *Davis v. Dunn*, 1 Dow. P.C. N.S. 317.

Petersdorff. In setting out a judgment, the plaintiff is not bound to set out the whole of it. The statement in the declaration is literally true; plaintiff did, as appears by the record, recover the amount stated; but then it is objected that he recovered something more than he has declared for. [Parke, B. The question really is, whether under the 9 G. 4, c. 15, there is any right to amend.] He then submitted the Court had the power to amend; the 9 G. 4, c. 15, after reciting that "great expense is often incurred, and delay or failure of justice takes place at trials by reason of variances between writings produced in evidence and the recital or setting forth thereof upon the record on which the trial is had in matters not material to the merits of the case, and such record cannot be amended at the trial," enacts, that "Every court of record holding plea in civil actions, any judge sitting at *nisi prius*, &c., if such court or judge shall see fit so to do, may cause the record on which any trial may be pending before such judge or court in any civil action, &c., when any variance shall appear between any matter in writing, or in print produced in evidence, and the recital or setting forth thereof upon the record, wherever the trial is pending, to be forthwith amended," &c. The rule laid down in the books of practice is this, "When, in consequence of a variance, the defendant is entitled to judgment or failure of record, the Court will in some cases, on a special application for that purpose, give the plaintiff leave to amend, even after judgment." *Rastall v. Stratton*, 1 H. Bl. 49; *Few v. Backhouse*, 8 Ad. & E. 789; *Cocks v. Brewer*, 11 M. & W. 51. [Parke B. If the plaintiff is desirous of amending, that must be made the subject of a separate motion. It was so held in *Munkenbeck v. Bushnell*, 4 Dow. 139.]

The Court gave judgment for the defendant.



## CONCLUSION OF 35TH VOLUME.

In closing the present Volume, we have to add the several notices, which, (to save space) were given on the cover of the Work, so far as they are of importance to be preserved for future reference. The announcements, which were merely temporary, and cannot be required hereafter, are not repeated.

## NOTES ON CASES REPORTED.

**Bill of Exchange—Promissory Note.** The case of *Padwick v. Baldwin*, reported on the 22nd January, p. 294, ante, is stated to be an action upon a *bill of exchange*, whereas it was an action upon a *promissory note*; the law laid down in that case, though good for a promissory note, would not be correct in the case of a bill of exchange, which is governed by 1 & 2 Geo. 4, c. 78.

**Devise of Trust Estates.**—M. W., one of our learned correspondents in the country, observes, that in the note respecting the power of trustees to devise trust estates (page 355 of the present volume,) a reference might have been made to the case of *The Midland Counties Railway Company v. Westcomb*, 11 Sim. 27, wherein the estate of a vendor, who by construction of equity had become a trustee for the purchaser, was saddled with extra costs, because he permitted the legal estate to descend upon an infant. In cases where it is expressly provided that a trust shall be executed by the person named, or his heirs or assigns, there seems to be a degree of inconsistency in holding that the trustee may transfer his duties by *will*, but not by *deed*.

**Attorney and Agent.**—In the Report of the second case of *Fennell v. Robins*, at p. 393, ante, the head note was omitted. In the first case a remedy in the form of money had and received was denied. From a correspondence between the parties it appeared that the London agents had, without authority, appropriated to the payment of a balance due to them from the country attorney the money received in the execution, and that a demand of that money had been made, and that they had expressed their surprise at being called on to refund it. *Held*, that, under these circumstances, and as the money had not come into their hands in the ordinary course of business, they were liable to be called upon to repay it under an application to the summary jurisdiction of the court.

**Restraint of Trade.**—A Correspondent at Leeds impugns the decision in *Goldsworthy v. Strutt*, reported p. 540, ante, observing, "that restrictions against commencing business within specified distances, must be confined to reasonable distances, or they are against the general policy of the common law, and void; and contending that it is unreasonable to restrict any person from commencing business within fifty miles of where he is known, giving a diameter of one hundred miles, and a circumference of about three hundred miles! This question does not appear to have been argued in *Goldsworthy* and *Strutt*, but simply what

should be the amount of damage for commencing business within the prescribed limits."

[We do not think that 50 miles is so very unreasonable a restriction as to render the agreement void. Ed.]

**Devise.**—In *Eardley v. Owen*, p. 409 ante. The names of E. Latham and S. Owen should be transposed: the former for the latter, where the latter is secondly mentioned.

**Railway Liability.**—The question tried in the well-known case of *Reynell v. Lewis*, came again before the Court of Exchequer, on the 9th Feb., at the Nisi Prius Sittings at Westminster. The Chief Baron said, that it is now a matter of settled law that a provisional committee was not a partnership, and no man could be made liable by the acts of the other members of the committee, unless it could be proved that he had given them authority to pledge his credit.

It appeared that the solicitors of the company had indemnified the defendant, and the Chief Baron observed that the indemnified member of the committee had become the mere puppet of the solicitors, and was deceiving all parties who might enter into the speculation upon the faith of his known honesty and uprightness of character. Both were deserving of censure,—for it was a most improper and discreditable transaction. It would, however, be for the jury to say what the defendant had done to make himself liable for the plaintiff's claim. Upon no occasion had the defendant been present at any meeting,—no orders had been given by him or in his presence. To whom had the plaintiff given credit? Had the defendant given authority for his credit to be pledged? The jury returned a verdict for the defendant.

## LAW OF ATTORNEYS.

**Must Commissioners for taking affidavits be practising attorneys?**—An attorney, who has ceased to take out his annual certificate, but whose name has not been struck off the Rolls, and who was duly appointed a Master Extraordinary in Chancery, and a Commissioner for taking affidavits in all the Courts, may perhaps legally exercise these respective offices, not receiving any fees or reward for the same, without a certificate; but it is very questionable whether he ought to do so. He was appointed on account of his professional character, and when that has ceased, the intention would seem to be that he should surrender his commission.

X. W. Y. inquires whether a practising solicitor can hold the office of sub-distributor of stamps? There seems to be no legal or other objection to this occupation. It is also asked, whether he can be a collector of assessed taxes? This appears to be doubtful, consistently at least with propriety. The other business (that of a house agent and auctioneer) would surely be a degradation.

In the *List of Sheriffs, &c.*, (at p. 458,) the Under-Sheriff for Sussex is Mr. Donald Barclay, (firm Barclay and King,) of Mayfield, and not Messrs. Palmer, who are the Deputy Sheriffs and Town Agents.



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